

UNITED STATES BANKRUPTCY COURT

DISTRICT OF PUERTO RICO

In Re:) Docket Nos. 17-03283-LTS
) 17-03284-LTS
) Title III
)
COMMONWEALTH OF PUERTO RICO,) San Juan, Puerto Rico
) May 17, 2017
)
Debtor.)

MOTION HEARING

BEFORE THE HONORABLE U.S. DISTRICT JUDGE LAURA TAYLOR SWAIN

UNITED STATES DISTRICT COURT JUDGE.

APPEARANCES:

For the U.S. Trustee: Ms. Monsita Lecaroz Arribas,
AUST

For Debtor: Mr. Martin J. Bieninstock, PHV
Mr. Scott K. Rutsky, PHV
Mr. Hermann D. Bauer-Alvarez, Esq.
Mr. Ubaldo Fernandez Barrera, Esq.
Mr. Daniel J. Perez Refojos, Esq.

For the Financial
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Mr. Jaime El Koury, Esq.

For Creditor
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Advisors: Mr. Roberto Abesada Aguet, Esq.
Mr. Kurt A. Mayr, PHV

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4 Public Finance
5 Guarantee Corporation: Ms. Marcia Goldstein, PHV
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8 For Creditor Ad Hoc
9 Retiree Committee: Mr. A. J. Bennazar Zequeira, Esq.
10 Mr. Robert D. Gordon, PHV
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12 For Creditor Mutual
13 Fund Group: Mr. Thomas Moers Mayer, PHV
14 Mr. Douglas Buckley, PHV
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22 Mr. Mark T. Stancil, PHV
23 Mr. Donald Burke, PHV
24 Mr. Gary A. Orseck, PHV
25 Mr. Jose Ramon Rivera Morales, Esq.
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For Creditor COFINA
Senior Bondholder
Coalition: Mr. Susheel Kirpalani, PHV
Mr. Brant Kuehn, PHV

For Creditor Ambac
Assurance Corporation: Mr. Roberto A. Camara Fuertes, Esq.
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Mr. Dennis F. Dunne, PHV
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For Creditor Cesar
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For Interested Party

3 Assured Guaranty Corp.: Mr. Heriberto J. Burgos Perez, Esq.
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For Interested Party

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8 Mr. Daniel Fliman, Esq.
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2	WITNESSES:	PAGE
3	None offered.	
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5	EXHIBITS:	
6	None offered.	
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1 San Juan, Puerto Rico

2 May 17, 2017

3 At or about 9:26 AM

4 * * *

5 THE COURT: Again, good morning and greetings to
6 counsel, to representatives of the press, and members of the
7 public. We have quite a complex agenda today, and so I will
8 try to move us through it as efficiently as possible.

9 I would first like to make a few remarks. And so
10 again, good morning. I am Judge Laura Taylor Swain, and it is
11 a great honor to have been chosen to oversee these
12 proceedings, which have no historical precedent and which
13 involve the very life of Puerto Rico and its people, as well
14 as the enormously significant financial interests of creditors
15 who hold its obligations or otherwise depend on Puerto Rico
16 for their financial well-being.

17 The scope and scale of the issues are, frankly,
18 humbling. And I thank you all for your trust, and I will do
19 all that I can to deserve it.

20 The goal of Title III and my goal here is to find the
21 way forward. There are of course very important disputes
22 about events of the past and about the characteristics and
23 rights and obligations that were established and have accrued
24 over several decades, if not longer.

25 Devoting all of our attention to litigation of legal

1 issues will not and cannot, however, create circumstances
2 under which all of the original expectations of all of the
3 entities and people involved can be satisfied fully and on
4 time. Our way forward must be based on acceptance by all who
5 are effected that the past was far from perfect, and that
6 there is no way to go back and make it perfect.

7 What we must do here together is work in good faith
8 to identify and implement the changes that are necessary to
9 enable Puerto Rico to emerge as a stronger place than it is
10 today. One that is providing quality education for its future
11 leaders, retaining talented people who can contribute to
12 Puerto Rico's future, building a vibrant economy, and
13 maintaining public safety; and by doing so, producing economic
14 growth that will provide increasing value for creditors and
15 appropriate support for the retirements of those who have
16 spent their working lives in Puerto Rico's service.

17 Every party in interest in these proceedings has
18 already made an investment in Puerto Rico's future. The
19 challenge is to create proper provisions for appropriate and
20 feasible returns on those investments as Puerto Rico heads
21 towards its better future.

22 The way forward will certainly involve pain and
23 disappointment for many, since there simply is not enough
24 money at present to provide the past levels of public services
25 and benefits and pay all of the debts of Puerto Rico and its

1 affiliated entities in full and on time.

2 In finding the way forward, we must make sure that
3 whatever sacrifices are made ensure that Puerto Rico is an
4 increasingly valuable investment for her people and her
5 creditors, many of whom live and do business here. This is my
6 goal, and it is the basis for my expectations of all those who
7 will be working on this effort.

8 Failure, frankly, is not an option. We cannot turn
9 off all of the lights and close the door on Puerto Rico. So
10 let us all work together through these proceedings to help the
11 lights burn brighter and illuminate the way to a better
12 future.

13 I will do my best to make sure that information about
14 these proceedings is readily available to the parties and the
15 public. Copies of all papers filed of important notices will
16 be available on the Court's website, and we will have overflow
17 courtroom space for observation of public hearings, as we do
18 today.

19 As we go forward, arrangements will be made for video
20 and telephone conferences, and for listening to those
21 proceedings in the courtroom. Those arrangements are not in
22 place yet. They will be announced by written notice when they
23 have been established.

24 Transcripts of the court proceedings, which are being
25 taken down by court reporters, will be available for

1 inspection and for order through the office of the Clerk of
2 the District Court as provided in the policies of the Judicial
3 Conference of the United States. Audio recordings are not
4 being made.

5 The Title III PROMESA cases were originally filed on
6 the District Court's docketing system. In order to make sure
7 that they are on a system that will be easier to use and that
8 keeps them in the proper order for this type of case, we moved
9 them last week to the Bankruptcy Court's docketing system.
10 This is just for administrative purposes. And there was a
11 brief period during the switch when some documents were not
12 accessible.

13 All of the filings in the debt restructuring
14 proceedings under PROMESA and litigation relating to issues in
15 those proceedings are now kept on the Bankruptcy Court's
16 docketing system for ease of administration and are available
17 through that system. These cases are still in the District
18 Court, however, and I preside over them as a District Judge of
19 the District of Puerto Rico.

20 And today we will also be discussing a separate
21 website that will make all of the public filings available for
22 free, and also host information concerning claims filed
23 against the debtors.

24 I would like to thank debtors' counsel for the
25 proposed agenda they prepared for today, and all counsel for

1 the many submissions that I have received over the past few
2 days. I've been busy, and I know you have been, too.

3 So in general, as we go forward today, parties that
4 filed timely objections will be afforded opportunities to
5 speak, preferably briefly and non-repetitively, in opposition
6 to the motions. Others who have filed timely requests to
7 speak will be afforded an opportunity to do so if time
8 permits. If time runs out, as it may well do, because we have
9 such a full agenda and so many things have happened, those who
10 have not been heard here in court are invited to file succinct
11 informative motions.

12 Now I will turn to counsel for the debtors for a
13 status report. We have much ground to cover today, so I again
14 ask all counsel to please be brief and to the point; and in
15 fact, aim for less than the minimum time estimated on the
16 agenda for each item. And I will do my best to do the same.

17 I also ask each lawyer speaking today to simply state
18 his or her name, and identify the entity he or she represents
19 when they begin speaking. Thank you.

20 MR. BIENENSTOCK: Good morning, Judge Swain.

21 THE COURT: Good morning.

22 MR. BIENENSTOCK: May it please the Court. My name
23 is Martin Bienenstock. I'm a member of Proskauer Rose LLP,
24 attorneys for the Financial Oversight and Management Board of
25 Puerto Rico, as representative of the two debtors, the

1 Commonwealth of Puerto Rico and the Puerto Rico Sales Tax
2 Financing Corporation, known as COFINA.

3 With me today are my partners, Scott Rutsky --

4 THE COURT: Good morning.

5 MR. BIENENSTOCK: -- Mr. Jaime El Koury, who is
6 general counsel of the Oversight Board. Also with us is
7 Mr. Arthur Gonzalez, one of the seven members of the Oversight
8 Board appointed by President Obama on August 31, 2016.

9 Unless the Court prefers otherwise, I propose to
10 provide Your Honor the status report requested in the Court's
11 May 10, 2017, Order, and then to proceed with the motions on
12 today's docket.

13 THE COURT: What I would ask is that you begin with
14 the status report, and then I will hear the status report from
15 the Office of the United States Trustee. And then I will call
16 you back to go through the motions.

17 MR. BIENENSTOCK: Sure.

18 It's impossible to start without recognizing, as Your
19 Honor did, the special and solemn nature of the cases we are
20 all embarking on, because these cases will heavily impact the
21 lives and futures of three and a half million residents of the
22 Commonwealth.

23 In Section 405(m) of PROMESA, the United States
24 Congress already found and legislated that there is a state of
25 fiscal emergency in Puerto Rico, rendering it unable to

1 provide its citizens with effective services.

2 All the attorneys in this room were specially
3 selected by their respective clients to craft and influence
4 the outcomes Your Honor will adjudicate. Your Honor was
5 specially selected by the Chief Justice of the United States
6 Supreme Court. My client, the Oversight Board, was
7 legislatively created by Congress with a statutory mandate in
8 Sections 101 and 701 of PROMESA to provide a method for Puerto
9 Rico to achieve fiscal responsibility and access to the
10 capital markets, which methods should include permanent
11 pro-growth fiscal reforms.

12 While it may be a classic and colossal understatement
13 to say Your Honor will preside over lots of issues on which
14 the debtors and creditors disagree, I'd like to highlight two
15 positive notes. First, despite the disagreements among the
16 debtors' attorneys and creditors' attorneys, we
17 enthusiastically recognize that this room is full of the most
18 brilliant and experienced restructuring lawyers in the world.
19 And at the end of the day, the result we achieve here can be
20 optimized with their ingenuity despite the adversarial process
21 that may lead to it.

22 Second, I am confident I can speak for all the
23 professionals here in representing that if there's anything we
24 can do to ease the strains and burdens on Your Honor and staff
25 in handling this case, we all want to cooperate and help. We

1 trust the Court will not be bashful in telling us what you
2 need and expect.

3 THE COURT: Thank you.

4 MR. BIENENSTOCK: Now I will answer the questions
5 Your Honor raised in the Order of May 10 in the context of the
6 status report, and I will strive to do so plainly and without
7 arguing the merits of legal issues, which would provoke
8 everyone else here to ask for oral argument.

9 Some of the creditors' objections to the pending
10 motions do go into the merits of some issues, but I'm
11 certainly not going to address them now. And it may be
12 unnecessary later.

13 To put the Commonwealth and COFINA cases in context,
14 Your Honor, they collectively have 55 percent of the 74 and a
15 half billion of bond debt, and most of the 50 billion of
16 virtually unfunded pension -- public pension debt that exists
17 in the 63 covered entities the Oversight Board is overseeing.

18 The Commonwealth is liable for approximately 12.7
19 billion of general obligation bond debt, and 5.7 billion of
20 general obligation guarantees of other entities' debts. The
21 Commonwealth is also liable for the pension debt to public
22 employees.

23 COFINA is liable for approximately 17.3 billion of
24 bonds at issue, which bonds are payable only from certain
25 sales and use taxes. Whether those taxes are property of

1 COFINA or available resources of the Commonwealth is one of
2 the primary and dominant disputed legal issues in this entire
3 situation. I will get back to that issue in a few moments
4 simply to explain why it is so important and impacts timing,
5 and to address how it may be resolved.

6 There are many other entities liable for the balance
7 of the 74 and a half billion of bond debt, but most of it
8 resides in a handful of entities. We call the electric
9 utility PREPA, and it is liable for nearly nine billion of
10 debt. The Government Development Bank for Puerto Rico has
11 approximately four billion of debt, and we call that GDB. The
12 Aqueduct and Sewer Authority is called PRASA, and that has
13 approximately 4.6 billion of debt. The University of Puerto
14 Rico has approximately 572 million of debt. The Employee
15 Retirement System, ERS, has approximately 3.1 billion of
16 debt.

17 And then we have what are called the clawback
18 entities. They are called clawback entities, because they
19 each receive certain tax revenues or fees to pay their debts,
20 but under the Puerto Rico Constitution, under certain
21 circumstances, some or all of the tax revenues are subject to
22 being clawed back to the Commonwealth when there is otherwise
23 a shortage of revenues to pay appropriations.

24 There are four clawback entities. The Highways
25 Authority is called HTA. It owes approximately six billion

1 dollars. The Convention Center is called PRCCDA. PRCCDA. It
2 owes approximately 531 million dollars. The Puerto Rico
3 Infrastructure Financing Authority is called PRIFA. It owes
4 approximately 2.1 billion. And the Bus Authority is called
5 MBA. It owes up to 128 million.

6 It is important to note that while the debt
7 restructurings of all these entities are the focal point for
8 everyone here, the Oversight Board is charged by PROMESA with
9 many other significant tasks that impact any plan of
10 adjustment. For instance, PROMESA charges the Oversight Board
11 with certifying and in some cases formulating fiscal plans and
12 budgets for each entity, which it does after procuring input
13 from all kinds of municipal, accounting, banking, economics
14 and legal experts. No budgets have been certified yet.

15 Additionally, the Oversight Board must screen all
16 Puerto Rico legislation, make management recommendations
17 concerning finance, economic forecasting, personnel training,
18 performance standards, privatization and commercialization.
19 It must also analyze pensions and approve or disapprove
20 critical projects proposed by its revitalization coordinator.

21 Now I can answer Your Honor's questions as to when we
22 believe we can propose a plan of adjustment, and whether and
23 to what extent active settlement negotiations are proceeding.
24 I'm going to answer them in the context of the entire
25 situation, not just the two pending cases, because these two

1 pending cases will not be the only two for long.

2 The answer is not just a few sound bites, because one
3 size does not fit all. PROMESA contains two methods of
4 restructuring debt. It allows something called Title VI
5 qualifying modifications when two-thirds of the debt being
6 voted in each class accepts the plan, and the Oversight Board
7 authorizes use of Title VI pursuant to PROMESA sections
8 104(i)(1) and 601(e). And PROMESA allows the more traditional
9 Chapter Nine and 11 type of reorganization, where at least one
10 impaired class accepts, and other classes of debt can be
11 restructured without their acceptances.

12 Currently, there are two consensual modifications the
13 Oversight Board is considering. One is for PREPA, involving
14 nine billion of debt; and one is for GDB, involving four
15 billion of debt. Other consensual agreements have been
16 attempted, are being attempted or will be attempted in the
17 near future.

18 The PREPA modification was recently renegotiated by
19 the Governor. That is the only modification that was somewhat
20 grandfathered by PROMESA, because it was originally negotiated
21 and signed prior to May 18, 2016.

22 In the cases of PREPA and GDB, the Oversight Board is
23 diligencing whether the proposed modifications work, which is
24 particularly critical for PREPA, because it directly impacts
25 the cost of living and doing business in Puerto Rico, which in

1 turn impacts the ability to end Puerto Rico's negative
2 economic growth and to start a sufficient positive growth rate
3 that can enable Puerto Rico's turnaround and achievement of
4 the Congressionally mandated objectives.

5 GDB's proposed Title VI modification results in a
6 gradual wind down. We believe it is likely that in the next
7 four to 12 weeks, the Oversight Board will authorize proposed
8 qualifying modifications in one to four cases out of the
9 universe of PREPA, GDB, PRASA and UPR.

10 Turning back to the current cases of the Commonwealth
11 and COFINA, I can better tell Your Honor about the timing of
12 certain benchmarks and what needs to be achieved before and as
13 part of plans of adjustment than I can tell Your Honor the
14 actual dates for proposing plans of adjustment.

15 First, under PROMESA Section 202, the Commonwealth
16 must produce a budget the Oversight Board should certify based
17 on the fiscal planning the Oversight Board already certified.
18 That should occur on or before June 30, 2017. And the
19 Oversight Board can impose a budget if the Commonwealth does
20 not timely produce one, but we believe it will.

21 Second, there is a gating legal issue I alluded to
22 before that must be resolved by settlement or adjudication or
23 as a contingency in the plan of adjustment. As I mentioned,
24 the COFINA debt is paid from a single source, namely sales and
25 use taxes. From the viewpoint of COFINA debtholders, the

1 present and future sales and use taxes are property of COFINA.
2 Conversely, from the point of view of the holders of the
3 Commonwealth's general obligation bonds, the sales and use
4 taxes are available resources of the Commonwealth, and
5 pursuant to the Puerto Rico Constitution, must be applied to
6 pay the GO bonds and not the COFINA bonds.

7 The magnitude of the COFINA debt and GO debt make
8 this a pivotal issue. If the GO bondholders are correct,
9 there is little or nothing to pay COFINA debt. If the GO
10 bondholders are wrong, the COFINA debt has a repayment source
11 and the funds available to pay the GO debt are acutely
12 diminished.

13 The Oversight Board has not taken sides in the COFINA
14 GO dispute. It wants a resolution and intends to drive a
15 settlement or require litigation to proceed. Before these
16 Title III cases were commenced, the Oversight Board and
17 Governor convened a mediation under the auspices of former
18 Bankruptcy Judge Allan Gropper for the specific purpose of
19 dealing with GO COFINA issues.

20 I've very recently spoken with representatives of
21 COFINA debtholders and GO debtholders about continuing the
22 mediation. Both the COFINA debtholders and GO debtholders
23 have expressed a willingness to continue negotiations with
24 Mr. Gropper standing ready to help as needed.

25 The bottom line is the Oversight Board is going to

1 | press both sides to negotiate, and if that doesn't produce a
2 | settlement, we will either try to have the COFINA board of
3 | directors or a special committee of it negotiate a settlement
4 | with the Governor, and then bring it to Your Honor for
5 | approval, or we'll press the parties to litigate the issue in
6 | this Court, inside or outside a plan of adjustment.

7 | Your Honor, the Supreme Court's Tmt Trailer Ferry
8 | decision was the guiding light for settlement when you were a
9 | bankruptcy judge, and it still is today. COFINA concerns are
10 | also the reasons for objections to our bank motion, and we may
11 | have found a solution that I'll describe later.

12 | THE COURT: And so if I can just interrupt you as to
13 | the assertion in the objections that the Oversight Board as
14 | debtor representative is fundamentally and irretrievably
15 | conflicted, I think I'm hearing from you that you have a setup
16 | in which there is a representative body arguing the COFINA
17 | side and a separate representative body arguing the
18 | Commonwealth side in the course of this; and generally that
19 | structure is expected to be adapted and continued, whether
20 | it's litigation or negotiations?

21 | MR. BIENENSTOCK: That's exactly right. And this is
22 | no different than any major Chapter 11 reorganization where
23 | the different affiliated entities have claims between them.
24 | And methods have to be found to adjudicate those claims even
25 | though they're all ultimately under one management. So here

1 the Oversight Board is not taking a GO COFINA side, and
2 doesn't plan to in the future.

3 THE COURT: Thank you.

4 MR. BIENENSTOCK: The last point about COFINA is that
5 Bank of New York as indentured trustee filed an interpleader
6 action yesterday to get instructions about a June 1, 2017,
7 payment. And its attorneys, Reed Smith, are here to address
8 it later if Your Honor allows or desires.

9 I'm almost finished.

10 In addition to the GO COFINA dispute, there are
11 several other issues that impede the rapid proposal of plans
12 of adjustment of which two are likely to be litigated in the
13 near term. One is the clawback issue, combined with the
14 Bankruptcy Code Section 928(b) issue.

15 As I mentioned, there are four entities that service
16 their outstanding debt with tax revenues that under certain
17 circumstances are subject to being rerouted to the
18 Commonwealth. Not surprisingly, the creditors of those four
19 clawback entities question whether the clawbacks to date have
20 been valid.

21 Additionally, under Bankruptcy Code Section 928(b),
22 creditors having liens against certain gross revenue streams
23 are relegated to having liens against those revenue streams
24 less the expenses of the project or system giving rise to the
25 revenues. In other words, under certain circumstances,

1 Bankruptcy Code allows the debtor to take encumbered revenues
2 to pay operating expenses. Here, some creditors challenge the
3 constitutionality of applying that section of the Bankruptcy
4 Code to debt issued before that section of the Code was
5 rendered applicable.

6 Finally, Judge, in Chapter --

7 THE COURT: May I just interrupt you again?

8 MR. BIENENSTOCK: Sure.

9 THE COURT: So is that in the context of a
10 pre-petition adversary or an adversary that has a civil case
11 that has been filed? Or do you expect that that issue will be
12 cued up within the Title III proceedings?

13 MR. BIENENSTOCK: Well, I have a little bit of
14 advantage, since the creditors of HTA, the Highways Authority,
15 filed an action that's not part of the Title III, because HTA
16 is not yet a Title III debtor. It soon will be. And so I do
17 predict with a fair amount of certainty that they will convert
18 that complaint into an adversary proceeding, and the issues I
19 mentioned will be among the issues that will be litigated, if
20 not settled.

21 THE COURT: Thank you.

22 MR. BIENENSTOCK: I should emphasize that in all
23 these situations, there either have been, are, or will be
24 intense negotiations. But it's probably just as well that the
25 clock ticks towards litigation deadlines, because that often

1 hastens settlements.

2 Finally, just as in Chapter 11, a company's Chapter
3 11 plan normally tracks its business plan insofar as the
4 business plan shows how much money is available for debt
5 service. Under PROMESA, the Oversight Board is charged with
6 certifying fiscal plans for each entity, which fiscal plans
7 among other things include a debt sustainability analysis and
8 a computation of amounts available for debt service.

9 Here, one of the issues proving most inflammatory is
10 that the Commonwealth certified fiscal plan shows only
11 approximately 900 million dollars per year available for debt
12 service on average. So at the end of the day, not
13 surprisingly, it's the money.

14 This has given rise to two legal issues. One issue
15 is the creditors contend the certified fiscal plan violates
16 several of the 14 requirements in PROMESA Section 201(b),
17 especially the requirement that fiscal plans respect the
18 lawful priorities and liens as may be applicable.

19 The other issue is the meaning and consequences of
20 PROMESA Section 106(e), which provides this Court has no
21 subject matter jurisdiction to review challenges to the
22 Oversight Board's certification determinations that the fiscal
23 plan complies with the 14 requirements of PROMESA Section
24 201(b).

25 Your Honor will be asked to determine what that means

1 in connection with assertions of statutory violations in
2 Section 201(b), and what that means in connection with
3 assertions that the fiscal plan violates creditors'
4 Constitutional rights. I've mentioned these issues, because
5 the parties disparate views of the law produce very different
6 views of their economic entitlements, and have made consensus
7 more difficult. I don't mean to suggest that I have by any
8 means listed all the issues that will come before this Court,
9 but I have most definitely mentioned some major issues with
10 major economic consequences.

11 The Oversight Board wants to emphasize that while
12 PROMESA Title III allows for cramdown, the Board nevertheless
13 desires to continue striving for consensus. Notably, Title VI
14 of PROMESA only restructures financial debt as opposed to the
15 50 billion dollars of pension debt and other non-financial
16 debt we have to restructure.

17 Therefore, Title III is necessary for the
18 Commonwealth, but does not prevent the Oversight Board in
19 tandem with the Governor from pursuing consensual
20 arrangements. It's very safe to say the Oversight Board is
21 pushing progress towards plans of adjustment with all
22 deliberate speed.

23 PROMESA requires that all Oversight Board members be
24 uncompensated. Therefore, they carry out all these tasks
25 while they all have day jobs. The Oversight Board is very

1 much on the Court's side in wanting this task over with and
2 done, especially because the 3.5 million people of Puerto Rico
3 will have better futures faster if this process proceeds
4 quickly.

5 Despite all the hurdles we disclosed in the Oversight
6 Board's information memorandum filed with the Title III
7 petitions, the ingredients and determination are here to
8 provide those three and a half million people reasons to
9 remain here and to enable the Commonwealth and its people to
10 achieve their great potentials.

11 Subject to any questions the Court has,
12 Mr. Rapisardi, one of the government's attorneys, has a very
13 short statement he would like to make if the Court allows.
14 And I know the Court wants to hear from the U.S. Trustee
15 before we turn to the pending motions.

16 THE COURT: Yes. A very short statement from
17 Mr. Rapisardi will be welcome.

18 Thank you, Mr. Bienenstock.

19 MR. RAPISARDI: Good morning, Your Honor.

20 THE COURT: Good morning.

21 MR. RAPISARDI: I am John Rapisardi of O'Melveny and
22 Myers on behalf of the Fiscal Agency and Financial Advisory
23 Authority, known by its Spanish acronym AAFAF, which is the
24 government's representative in these Title III proceedings.
25 I'll keep my remarks brief as promised.

1 Your Honor, just for some background as to AAFAF and
2 its role in these cases, it is important to understand that
3 AAFAF was created by Puerto Rico law on April 6, 2016.
4 Pursuant to Act Two of 2017, which was signed into law this
5 past January, AAFAF'S role expanded, and it was vested with
6 the sole authority to renegotiate, restructure and reach
7 accord with creditors with respect to any part of Puerto
8 Rico's public debt issued by any of Puerto Rico's governmental
9 entities.

10 AAFAF is also charged with the responsibility to
11 collaborate, communicate and cooperate with the Oversight
12 Board. And we have been doing that to date.

13 AAFAF recognizes the role of the Oversight Board and
14 powers that Congress has given it under PROMESA, and in
15 particular acting as the debtors' representatives in these
16 Chapter 11 cases, Title III cases, Your Honor.

17 Under the legal framework as established by PROMESA,
18 there are two separate processes. The first process is a
19 joint certification of the fiscal plan that provides for
20 fiscal reform and operational restructuring of the government.
21 And the second process, which is the approval of a plan of
22 debt adjustment.

23 The fiscal plan as certified by the Oversight Board
24 on March 13 is a product of cooperative discussions and
25 dialogue between AAFAF and the Oversight Board. Going

1 forward, we will be appearing before the Court on those
2 operational matters that require the attention under Title
3 III, and we'll coordinate our efforts with the Oversight
4 Board's professionals so as not to be duplicative or
5 burdensome to the Court.

6 We are also mindful, Your Honor, that as recognized
7 by PROMESA, within the context of these Title III proceedings,
8 the government's exercise of its political and governmental
9 powers, including the right to set policy through it's elected
10 officials, will not be interfered or impeded. The government
11 will work with creditors and parties of interest, and take
12 whatever constructive steps we can to build bridges, foster
13 useful dialogue, and engage where other parties are going to
14 be reasonable. We are committed to consensual resolution
15 where possible.

16 As the Court -- I think Mr. Bienenstock just alluded
17 to, AAFAF just recently announced the restructuring of the
18 Government Development Bank within the Title VI proceeding.
19 That process will be moving forward. It will be subject to
20 Oversight Board certification, and ultimately, assuming the
21 votes meet the requirements under Section 601 of PROMESA, will
22 be submitted to this Court for approval.

23 We recognize that there are a variety of different
24 constituencies involved that hold competing interests in these
25 cases. With respect to all those parties and their roles in

1 | this very difficult case, we are very much aware of that.

2 | However, it is important to remember that the people of Puerto
3 | Rico hold the greatest stake and vested interest in a swift
4 | and successful resolution of these cases.

5 | I would also like to note that the Governor of Puerto
6 | Rico is personally and deeply committed to a restructuring
7 | process that will be concluded as expeditiously as possible
8 | for the benefit of the people of Puerto Rico. He's confident
9 | that through the government's sustained fiscal and budgeting
10 | compliance, long-term economic growth, governmental structural
11 | reform, and fair restructuring of debt, Puerto Rico will
12 | emerge stronger and better, with a brighter future.

13 | Thank you very much, Your Honor, for having allowed
14 | me to make these remarks, and I am available at any time to
15 | answer any questions you may have.

16 | THE COURT: Thank you, Mr. Rapisardi.

17 | And now I would invite the representative of the
18 | United States Trustee.

19 | U.S. TRUSTEE LECAROS ARRIBAS: Good morning, Your
20 | Honor. May it please the Court.

21 | THE COURT: Good morning.

22 | U.S. TRUSTEE LECAROS ARRIBAS: Monsita Lecaros
23 | Arribas, U.S. Trustee, on behalf of Guy Gebhardt, Acting
24 | Trustee for Region 21. With me is Marie Giannirakis, an
25 | attorney with our Cleveland office.

1 We appear in response to the Court's Order of May 10,
2 2017, requesting the representative of the United States
3 Trustee to appear and provide a status report, including his
4 expectations and timetable relating to the formation of
5 committees.

6 The U.S. Trustee has two responsibilities under Title
7 III: The appointment of one or more committees under
8 Bankruptcy Code Section 1102, and the review of request for
9 compensation of professionals employed by the Oversight Board,
10 the debtors, and committees.

11 The U.S. Trustee is prepared to elicit responses from
12 unsecured creditors for the appointment of committee or
13 committees. We recognize there's a pending motion for entry
14 of an Order directing the appointment of an official retiree
15 committee, and appointing that the petition have an ad hoc
16 retiree committee and official retiree committee. The
17 determination of such motion may effect our decision making
18 regarding the composition of the unsecured creditors
19 committee.

20 THE COURT: May I just stop you? One reason that I
21 wanted you to make a status report was to ascertain the
22 position of the United States Trustee as to the reading of the
23 Statute, which in the first provision says the United States
24 Trustee forms committee or committees, and then permits an
25 application -- well, and permits an application to the Court

1 to form a committee.

2 And so if it is the intention of the Office of the
3 United States Trustee to assay the formation of an unsecured
4 creditors committee or committees that the United States
5 Trustee would consider appropriately comprehensive, I did not
6 want to preempt the United States Trustee's exercise of its
7 judgment in the first instance as to the appropriate universe
8 of committees and representatives by acting precipitously, if
9 you will, on the pending motion.

10 And so in your remarks a minute or so ago, you
11 indicated that you would defer to me. Your perspective is
12 more holistic than mine in this instance, and so I wonder if
13 there is a way that I can get a sense of the direction and
14 thinking of the United States Trustee's Office that will
15 inform any necessary action by me in respect to that motion.
16 I hope that makes sense.

17 U.S. TRUSTEE LECAROS ARRIBAS: Okay. Well, we
18 believe that Section 1102 provides for two ways that a
19 committee can be formed. One can be because of the Court's
20 Order of Appointment, or because the United States Trustee
21 determines that an unsecured creditors committee can be
22 formed. And we are in that process.

23 As to the motion filed by the ad hoc committee, we
24 appreciate the important role that the retirees will play in
25 these cases. Retirees deserve official committee

1 representation. We will ensure that they receive it. The
2 only question for the Court would be whether there should be a
3 separate committee just for retirees to adequately represent
4 their interests or not, or whether just an unsecured creditors
5 committee can incorporate those retirees.

6 The U.S. Trustee shall be guided by the Court's
7 decision on that preliminary question and proceed accordingly.
8 However, we will be filing by the deadline of this Friday a
9 limited response to the motion of the ad hoc committee to the
10 extent that it asks the Court to appoint or direct the
11 appointment of the alleged ad hoc retiree committee as
12 official retiree committee.

13 The Court we understand does not have this authority.
14 Under Section 1102(a)(2) of the Bankruptcy Code, which applies
15 under PROMESA, appointing members of an official committee is
16 a responsibility entrusted to the U.S. Trustee and not to the
17 Court.

18 THE COURT: Thank you. And that position will be --

19 U.S. TRUSTEE LECAROS ARRIBAS: In writing by this
20 Friday.

21 THE COURT: Thank you.

22 U.S. TRUSTEE LECAROS ARRIBAS: Also pending before
23 the Court is a limited objection of National Public Finance
24 Guaranty Corporation filed on May 15. In paragraph nine of
25 this limited objection, National states that PROMESA is

1 ambiguous regarding the U.S. Trustee's authority in cases
2 under Title III of PROMESA.

3 Section 301 of PROMESA incorporates Bankruptcy Code
4 Section 1102. Section 1102 establishes the U.S. Trustee's
5 responsibilities with respect to the formation of an official
6 committee of creditors. Section 316 of PROMESA requires that
7 the U.S. Trustee be served with notice of all applications for
8 compensation filed by professionals employed by the Oversight
9 Board, the debtor and official committees.

10 Section 316 is identical to Section 330, virtually
11 identical to Section 330 of the Bankruptcy Code. This
12 includes authority for the United States to move for an award
13 of compensation less than that requested in a professional
14 fees application. Accordingly, the U.S. Trustee will review
15 and comment on the applications under the standards generally
16 applicable under Section 330, including guidelines the U.S.
17 Trustee follows in larger cases under Chapter 11 of the
18 Bankruptcy Code.

19 The U.S. Trustee is in discussions with counsel for
20 the Board and for the Commonwealth, and expects to present to
21 the Court a proposal for the periodic submission and review of
22 applications that ensures fairness, transparency and
23 efficiency.

24 Basically, Your Honor, the U.S. Trustee's powers and
25 abilities in a PROMESA type of Title III proceeding are

1 limited to the two subjects discussed before. We appreciate
2 the cooperation received from the United States Bankruptcy
3 Court of Puerto Rico in making available to us space for the
4 committee formation meeting. We will be posting information
5 regarding the solicitation and selection process on the
6 website for the U.S. Trustee for Region 21, which is
7 www.justice.gov/ust-regions-r21.

8 We will also request that the District Court, the
9 Bankruptcy Court, the Board and Prime Clerk post this
10 information, which will be available for everybody.

11 THE COURT: Thank you. And so your administrative
12 people will be speaking to our respective administrative
13 people to get the same information on the websites?

14 U.S. TRUSTEE LECAROS ARRIBAS: That is correct, Your
15 Honor.

16 THE COURT: Thank you.

17 U.S. TRUSTEE LECAROS ARRIBAS: That will be all.

18 THE COURT: Thank you very much, Ms. Lecaros.

19 All right. Now I think we turn to the motions
20 agenda.

21 MR. BIENENSTOCK: Your Honor, if it's okay, my
22 partner Scott Rutsky will start off. He somehow drew the
23 straw with uncontested motions to start.

24 THE COURT: Very well. Then Mr. Rutsky.

25 MR. RUTSKY: Good morning, Your Honor.

1 THE COURT: Good morning.

2 MR. RUTSKY: Scott Rutsky with Proskauer Rose for the
3 Oversight Board as representative of the two debtors in these
4 Title III cases.

5 Your Honor, we filed our hearing agenda which lists
6 six First-Day Motions that were filed, and they're broken down
7 into two buckets. There were three that are uncontested, and
8 three that are subject of objections.

9 The three uncontested matters are in our hearing
10 agenda at items three, four, and five. Item three is the
11 Motion to Approve the Form of Notice of the Commencement of
12 the Title III cases, the manner of service of that notice on
13 creditors, and publication of that notice. Item four is a
14 motion to fix the time by which the debtors have to file a
15 creditors mailing matrix with the Court, and to file their
16 official list of creditors with dollar amounts.

17 And finally, item five in the uncontested section is
18 the retention and engagement of, employment of Prime Clerk as
19 outside noticing agent, solicitation agent, and claims agent
20 to the debtors in the court.

21 Your Honor has mentioned before this is a long and
22 complex docket. So I don't know if Your Honor wants me to
23 engage in discussion on each of these motions or address
24 questions or simply present Orders, because they are
25 uncontested. I'm happy to proceed in any way you like.

1 THE COURT: Well, they are uncontested. I think that
2 the most efficient thing would be for me to raise with you
3 certain questions that I had, and a couple of housekeeping
4 issues that I have with respect to the proposed Orders.

5 First, the notice, the proposed notice that will be
6 served on all parties, and ultimately on everyone in the
7 creditors list, is in English. Do you propose to send that in
8 English and Spanish or with some sort of a flag on the English
9 version that says if you don't read English, you need to have
10 this read to you in Spanish, because it's an important legal
11 document? I'm concerned about accessibility of the
12 information.

13 MR. RUTSKY: Your Honor, our intention or what we
14 specified in the motion was with respect to the publication of
15 the Notice of Commencement, we were going to publish that once
16 for three consecutive weeks in El Nuevo Dia --

17 THE COURT: Yes.

18 MR. RUTSKY: -- in Spanish, and once for three
19 consecutive weeks in the Caribbean News in English.

20 THE COURT: Yes.

21 MR. RUTSKY: As well as posting it in a bond
22 periodical.

23 THE COURT: And the bond periodical would be in
24 English?

25 MR. RUTSKY: In English.

1 THE COURT: My concern is that, as I understand it,
2 El Nuevo Dia, its circulation is here on the Island, as is the
3 Caribbean Business circulation principally. And people have
4 been moving off the island, and there are people on the
5 mainland who may have invested in Puerto Rico securities who
6 would ultimately be getting the creditor notice mailed to them
7 somewhere else and may not be daily readers of these
8 publications.

9 And so have you thought about a signal to people who
10 may be primarily Spanish speakers on the mailed notice that
11 would indicate that they need to pay attention to it?

12 MR. RUTSKY: Your Honor, we frankly did not, but we
13 are happy to mail two versions, in English and Spanish. It's
14 really not that big of an administrative burden, and we think
15 it makes a lot of sense.

16 So we can adjust the Order. I don't know whether
17 Your Honor would like us to present those, but we can submit
18 the Order afterwards.

19 THE COURT: Very good. I think we'll come back at
20 the end to a presentment schedule. What I generally have in
21 mind for any modified Orders is five days notice, with two
22 days before the presentment date for any further objections to
23 the form of the notices.

24 Then an informational question. This is just for
25 Rule 1005. Does either of the debtor committees have any kind

1 of Federal tax ID number that should be in the caption?

2 MR. RUTSKY: Your Honor, that's a good question. I
3 honestly don't know.

4 Do you know? I'm guessing --

5 MS. UHLAND: Suzzanne Uhland with O'Melveny & Myers,
6 on behalf of AAFAF. Yes, they have Federal tax ID numbers,
7 and they can correct the caption.

8 THE COURT: Please do that. File the amendment, and
9 carry that through as necessary.

10 MR. RUTSKY: We'll do that, Your Honor. Thank you.

11 THE COURT: Thank you.

12 And as a global note, on the signature blocks of
13 these Orders and all other references to me, it should be
14 Laura Taylor Swain. Laura T. Swain is not a formulation that
15 I use. And on some of the proposed Orders at least, well, I
16 think all of them as originally filed, the captions need to be
17 updated to reflect the Bankruptcy case numbers.

18 And I think it would be useful, particularly if we
19 are going to be seeing more debtors to whom there will be
20 joint administration proposals, that there be a reference to
21 the Bankruptcy case numbers in the footnotes that you have
22 that enumerate the member cases.

23 MR. RUTSKY: We will add those, Your Honor.

24 THE COURT: And those were my only comments on that
25 Order. Otherwise, I approve it and direct you to submit --

1 present a revision that incorporates these changes.

2 MR. RUTSKY: We will do so, Your Honor.

3 THE COURT: Thank you.

4 And as to the Creditor Matrix Motion, I had no
5 request for changes or edits other than the signature line.
6 And so that should be presented on the same schedule.

7 And then as to the Prime Clerk authorization as to
8 which there was no objection filed, I do have a few concerns.
9 One is that paragraph six of the Proposed Order includes a --
10 I'll call it a disclaimer provision that permits Prime Clerk
11 to refuse to provide services if it doesn't receive an advance
12 or direct payment.

13 Now, internally, the document is in conflict, because
14 paragraph 26 says Prime Clerk shall not cease providing the
15 services during these cases unless it's excused from by Order
16 of the Court. And so the paragraph 26 provision is to me the
17 appropriate one, and I would ask that that -- I think it's
18 sort of the final sentence of paragraph six on page three be
19 deleted.

20 Do you have any issues with that?

21 MR. RUTSKY: I do not, Your Honor. I do not know if
22 there's a representative of Prime Clerk here.

23 MR. SCHEPPER: We can strike that sentence.

24 THE COURT: Would you please state your name and
25 speak loud?

1 MR. SCHEPPER: Christopher Schepper, Prime Clerk
2 executive vice president. And that we can strike that
3 sentence from the retention application.

4 THE COURT: Thank you.

5 The next issue is as to the list of expected duties
6 of Prime Clerk that's embodied in Section 1(b) of the
7 application. Section 1(b)(15)(i) indicates that the claims
8 will be on the claims register, which is of course quite
9 logical. But there's nothing that specifies that the full
10 proof of claim will be available to the public. And it's my
11 understanding that that's typical, and we don't have any other
12 provision in ECF for doing that.

13 So can you undertake that that will be part of Prime
14 Clerk's work under this Order?

15 MR. SCHEPPER: Your Honor, yes, the claim will be
16 available on our website.

17 THE COURT: So the full proof of claim will be
18 available as well as the claims register?

19 MR. SCHEPPER: Correct.

20 THE COURT: Thank you.

21 Then there seems to be some missing language in --
22 actually, this is still the application, paragraph 16, clause
23 iv. It's just ambiguous as its written, because it says that
24 the debtor is requesting authority to hold the advance for
25 security.

1 I'm assuming that you meant to say the debtor is
2 requesting authority to permit Prime Clerk to hold the advance
3 as security. If you'll just confirm that that's the
4 intention. I wouldn't be signing the application, but I would
5 like that clear on the record.

6 MR. RUTSKY: Yes. That is correct, Your Honor. That
7 is the intention. It would be Prime Clerk holding the advance
8 as security.

9 THE COURT: Thank you.

10 Now turning to paragraph seven of the Order. That
11 provides that any disputes will be resolved by the Court. But
12 the engagement letter in paragraph 11 has an arbitration
13 provision. So the Order does say that it supercedes anything
14 to the contrary in the engagement agreement, but would you
15 confirm on the record that it is the parties' intention that
16 that arbitration provision be superseded?

17 MR. RUTSKY: Yes, Your Honor. That is the intention
18 of the parties.

19 THE COURT: Thank you.

20 And going to paragraph 10(b) of the Order, which is
21 the provision for indemnification for tax obligations, clause
22 10(b) says that the debtor shall pay or reimburse any taxes
23 that are applicable to services performed hereunder or that
24 are measured by payments made hereunder, and are required to
25 be collected by Prime Clerk or paid by Prime Clerk to a taxing

1 authority.

2 That last clause it seems to me in the context of
3 this overall clause could be read to require the debtors to
4 indemnify Prime Clerk for income taxes on the amounts paid for
5 its services. Is that your intention, and if so, why?

6 MR. RUTSKY: Your Honor, I do not believe that is the
7 intention. I think the intention of that paragraph is to
8 reimburse them for taxes that they may incur directly related
9 to the provision of the services, not for income taxes that
10 Prime Clerk might be subject to by virtue of the revenue they
11 gain under this agreement.

12 THE COURT: And so what I would propose to you is
13 that the final clause, the "or paid by Prime Clerk to a taxing
14 authority" be excised, because I think that's the one that
15 really creates the ambiguity. It would retain the reference
16 to "are required to be collected," and generally refer to
17 taxes that are applicable to the services.

18 So would you consider that or some other modification
19 that would make the exclusion of Prime Clerk's income taxes
20 clear and include that in the settled and modified Order?

21 MR. RUTSKY: I would, Your Honor. And subject to any
22 comments by Prime Clerk, I would think that that last item
23 there is really to reimburse Prime Clerk with respect to any
24 taxes paid to a taxing authority on behalf of the debtors is
25 what is intended there. And we can fix that.

1 MR. SCHEPPER: (Nodding head up and down.)

2 THE COURT: Thank you. And I note for the record
3 that the Prime Clerk representative nodded affirmatively to
4 that general concept. So I think we're in good shape there.

5 And so those were the only issues that I had with
6 respect to Prime Clerk, so kindly settle an Order reflecting
7 those.

8 MR. RUTSKY: We will, Your Honor. And we will make
9 the other modifications to all of the Orders as you have
10 requested. And I thank you very much for that.

11 THE COURT: Thank you.

12 MR. RUTSKY: I think we now get, if you're following
13 the hearing agenda, to the contested matters.

14 THE COURT: Yes.

15 MR. RUTSKY: And if Your Honor will permit, I think
16 between Mr. Bienenstock and myself, we've divided these
17 motions. I think he's going to address the Court on item
18 number six, the Joint Administration Motion.

19 THE COURT: Very well then. Thank you.

20 MR. BIENENSTOCK: Thank you, Your Honor. Martin
21 Bienenstock of Proskauer Rose for the Financial Oversight
22 Board as representative of the debtor.

23 THE COURT: Actually, before you begin, I was
24 thinking that it might be efficient for me to flag the
25 comments that I had as to form, and then for you to basically

1 be responsive to the objections. And then if there are any
2 objections as to which people still want to speak in a
3 non-repetitive way, everybody can be informed of what the
4 Court's throwing in the mix as well.

5 Is that acceptable?

6 MR. BIENENSTOCK: Sure.

7 THE COURT: Okay. Very good.

8 So let me -- all right. The major conceptual issue
9 is that I have concluded that if we go with the joint
10 administration, and there is a master docket, which makes
11 sense, there should nonetheless be docket entries in the other
12 specific dockets for pleadings and other filings that are
13 identified to the other specific cases, so that we don't have
14 to deconstruct the whole master docket to be sure that we
15 identify issues that are just specific to a debtor.

16 So, for instance, in the provision for the notice to
17 be filed on the COFINA docket, I would add at the end of that,
18 unless they relate solely to this Title III proceeding, in
19 which case they are to be docketed in both the lead case and
20 in this case. The antecedent of that being reference to the
21 COFINA case of course.

22 And then in the second caption box, there should be a
23 legend that says this filing relates only to, and again a
24 reiteration of the requirement that the filing be entered in
25 both the lead case docket and the docket of the debtor case to

1 which the filing is applicable. That would be in paragraph
2 five.

3 And in paragraph six, where there's a reference to
4 the Clerk's maintenance of a master docket, and one file for
5 each of the Title III cases, and because we are at this point
6 maintaining the files for these cases on the Bankruptcy Court
7 system, I would like a specific recognition of that to the
8 effect that the Clerk's Office may for administrative purposes
9 only maintain the consolidated docket and the dockets of the
10 underlying Title III cases on the CM/ECF system of the United
11 States Bankruptcy Court for the District of Puerto Rico.

12 I'm trying to speak slowly, so it will be accurate in
13 the transcript, because I realize you're not taking down word
14 for word, and it's not necessary for you to do that.

15 Then there is also reference to the ability to obtain
16 paper copies. I think you say they may be available from the
17 Clerk of Court. That should indicate that paper copies may be
18 obtained from the Clerk of the District Court for a fee as
19 provided in the District Court miscellaneous fee schedule,
20 because I want throughout this to be as clear to people as
21 possible as to which court services they're going to for which
22 purposes.

23 So those were my housekeeping comments.

24 MR. BIENENSTOCK: Thank you, Your Honor.

25 By my count, there were five of the objections that

1 mentioned the Joint Administration Motion, and two of them did
2 not really argue that the motion should be denied. One was by
3 the COFINA Seniors, which basically addressed what Your Honor
4 just addressed. And we had actually dealt with it in
5 paragraph five of the proposed Order, which is because there
6 may be pleadings filed under the consolidated or jointly
7 administered caption that only affect one debtor, you should
8 specify, as Your Honor has now outlined how it should be done,
9 which estates are effected. And so I think that's dealt with.

10 Also, I think the spirit of our motion was basically
11 captioned in National's comment that it has no -- in paragraph
12 ten of its pleading, it said it has no objection to procedural
13 joint administration. And I think that's really what my sense
14 is, that all the creditors wanted to hear, we have no intent
15 that this procedural joint administration have any impact on
16 whether a given party has standing in one matter or another,
17 or how many committees there should be, or anything outside
18 the fact that we're having one docket for procedural purposes
19 only, so that people don't have to file multiple pleadings
20 with different captions and with the rest of the pleadings
21 being identical. It's just efficiency. We're not trying to
22 go beyond that.

23 Now, several -- the three other pleadings filed that
24 mentioned the Joint Administration Motion are true objections.
25 One of them asks that the Court -- the Mutual Funds Group asks

1 that joint administration should be conditioned on the Court
2 saying in its Order that COFINA creditors have standing in the
3 Commonwealth case. And as I just said, I think this Order
4 shouldn't get into that. It wasn't the intent. As matters
5 come up, people raise standing issues. Your Honor will decide
6 them when Your Honor knows the facts and circumstances in
7 which standing is being challenged.

8 And several of the objections mentioned the conflict
9 that Your Honor alluded to earlier between the COFINA estate
10 and the Commonwealth estate, because of the issue that I think
11 I spent part of the status report explaining. The existence
12 of a claim between two debtors should not be a reason to
13 deprive everyone of the efficiency of joint administration for
14 procedural purposes only.

15 Fortunately, I already had the opportunity to explain
16 to Your Honor how certainly from the Oversight Board's point
17 of view, we don't think it has any conflict, because it
18 doesn't intend to take sides in that dispute. But even if
19 that were not the case, that is an issue Your Honor would have
20 to deal with, with or without joint administration.

21 We are the representative of both debtors, because
22 Congress enacted a Statute that says we are, and we have to do
23 that. So it's really not a joint administration issue.

24 Your Honor, I -- and the other point I wanted to
25 make, Your Honor, is that depending how Your Honor and other

1 parties read Section 308(b) of PROMESA, the absence of joint
2 administration could cause the First Circuit to appoint a
3 different judge for COFINA. And since this issue between
4 COFINA and the Commonwealth is so integral to the overall
5 outcome, we don't think having two different judges on it
6 would promote efficiency or really anything positive, even if
7 both judges are terrific.

8 THE COURT: May I ask you to pause for just a minute
9 there?

10 MR. BIENENSTOCK: Sure.

11 THE COURT: Apologies for that delay, but based on
12 the information that I have, the two judge problem would not
13 be a problem either way.

14 MR. BIENENSTOCK: Scratch that then, Your Honor.

15 THE COURT: So we don't have to talk about that.

16 MR. BIENENSTOCK: With that, Your Honor, unless Your
17 Honor has questions, those are my responses and the reasons
18 why we ask the Court to grant the Joint Administration Motion
19 for procedural purposes only.

20 THE COURT: And this is subsumed to a large extent in
21 your remarks, but just to make sure that it's clear to me, may
22 I assume that your response to the COFINA constituency
23 objection that noticing the entire creditor list on issues
24 related to the COFINA petition is overbroad and potentially
25 improper, that the Board's response is that whether it's

1 overbroad or not is integral to the litigation? And there are
2 positions on both sides, so that it would be appropriate for
3 everyone to be noticed with issues as to standing, and the
4 underlying legalities being ones for litigation?

5 MR. BIENENSTOCK: Exactly, Your Honor. Thank you.

6 THE COURT: Thank you.

7 Do any objectors wish to be heard?

8 MR. DUNNE: Good morning, Your Honor.

9 THE COURT: Good morning.

10 MR. DUNNE: For the record, Dennis Dunne from
11 Milbank, Tweed, Hadley & McCloy on behalf of Ambac. Ambac has
12 objected to joint administration.

13 I'll admit this is the first time I've done this in
14 my career, Your Honor, and I don't do it lightly, for reasons
15 that I'll get into in a moment. But by way of background,
16 Ambac insures bonds. They've insured bonds that have been
17 issued by COFINA. They have insured bonds that have been
18 issued by the Commonwealth, and many other structures.

19 Ambac is deeply invested in the long-term financial
20 health of the Commonwealth. Some of our insured bonds don't
21 come due for decades. We're here for the long hall. We want
22 to see Puerto Rico succeed. We want to see it prosper. And I
23 think this will be the only time in my remarks I agree with
24 Mr. Bienenstock, but that we are committed, as I think are
25 everybody in the courtroom, to finding a solution here. And

1 the solution that's in the best interest of the residents of
2 Puerto Rico, and also not in derogation of people's rights
3 around the table. But we all are going to commit maximum
4 effort to doing that, Your Honor.

5 THE COURT: Thank you for confirming that.

6 MR. DUNNE: With respect to the objection, Bankruptcy
7 Rule 1015 requires the Court to consider protecting creditors
8 of different estates against potential conflicts of interest.
9 I want to talk about those conflicts for a minute, because I
10 don't think Mr. Bienenstock's description is accurate. So let
11 me go through that.

12 COFINA is a securitization vehicle that was created
13 over a decade ago, 2006, by the Puerto Rico legislature. By
14 law, it owns a portion of the sales and use tax. COFINA bonds
15 are not recourse bonds. They're not backed by the full faith
16 and credit of the Commonwealth, the other debtor. They are
17 solely recoured to COFINA.

18 The dedicated sales tax is deposited directly into a
19 special account created by the legislature to ensure that the
20 Commonwealth had no access to it. The enabling legislation is
21 also explicit that the sales and use tax that is property of
22 the COFINA shall not constitute resources available to the
23 Commonwealth, nor shall these be available for use by the
24 Secretary of the Treasury.

25 Now, Mr. Bienenstock wants to join issue on that, but

1 --

2 THE COURT: Yes.

3 MR. DUNNE: -- the point is if you had a pure
4 fiduciary, and I'll come back to the pure fiduciary for
5 COFINA, it's massively oppositional with the Commonwealth. It
6 is not -- there is a general level of conflict, and there is
7 specific. The general is Mr. Bienenstock wants to describe
8 the dispute as if it was a corporate Chapter 11 case which had
9 to submit to Chapter 11 claims, and we'll figure out each way
10 it flows.

11 It's like saying, you know, this was Kraft -- I
12 always come back to my kids eat too much mac and cheese. And
13 Kraft was selling mac and cheese to a U.S. debtor and a
14 foreign debtor in France. On 99 percent of the issues,
15 they're going to be aligned on advertising, on sales, on
16 growth. They may also have an intercompany claim. That's
17 perfectly appropriate to jointly administer this.

18 THE COURT: Mr. Dunne, I understand that, and I have
19 read your submission, which was very helpful in illuminating
20 this issue for me. I understand that the position of the
21 COFINA insurers and the position of the COFINA bondholders is
22 fundamentally opposed at this threshold level to the position
23 of the Commonwealth, which has approved and proposed -- has an
24 approved, proposed fiscal plan that contemplates the invasion,
25 if you will, of the funds that have been set aside for COFINA.

1 And that there was legislative action that I will say purports
2 to, because I know that there are arguments about the validity
3 of that, authorize the invasion of funds that have heretofore
4 been identified for COFINA.

5 But whether -- two things: Whether or not there is
6 joint administration, that issue exists in both cases. The
7 Commonwealth plan doesn't work unless the COFINA funds can be
8 invaded. And any notion of a COFINA only plan only works if
9 insurers and bondholders win that argument. And so I don't
10 see why denying joint administration really changes that
11 landscape.

12 And we've had representation here from the Oversight
13 Board that it is aware of and has cued up the system for a
14 vigorous litigation of the COFINA position as against the
15 Commonwealth position. And certainly it would not be my
16 intention in signing a Joint Administration Order to preclude
17 any party in interest from taking -- any party in interest who
18 has standing, and we can fight about standing, but from taking
19 strongly the position that COFINA's case isn't being advocated
20 strongly enough, and here are some better arguments or vice
21 versa.

22 So I with that wanted to give you some insight into
23 where I am now, and ask you to respond on the joint
24 administration issue.

25 MR. DUNNE: Yes. And I'll move from the general to

1 the specific, because Your Honor's addressing my general
2 oppositional point that if, you know, we are right, that the
3 law as existed holds, we're solving for restructuring, there
4 is no overlap. The specific goes to the overlap that COFINA
5 doesn't have operations; they don't have any employees; they
6 don't have utilities; all of which is going on inside the
7 Commonwealth debtor box if you will.

8 We are saying that A, there may not be as many
9 filings in the COFINA. So the need to have joint
10 administration is not as great as if you had an operating
11 entity with all those motions.

12 And so what's the harm potentially? I'll get very
13 specific. The utility's motion -- the utility filed a motion
14 I believe yesterday for adequate assurance. And they, as you
15 would expect, defined the debtors to be the Commonwealth and
16 COFINA, and sought relief, adequate assurance against the
17 debtors' property and from the debtors.

18 If we proceed with joint administration, we are going
19 to have to carefully monitor every one of those filings and
20 those requested relief to carve out COFINA when it's
21 inappropriate. And my point is it's almost always
22 inappropriate, because they don't -- there is no connection,
23 and there is no overlap. There is no operation.

24 THE COURT: Okay. So it's inappropriate if you win
25 on your isolation argument. If you don't win on your

1 isolation argument, the creditors of the Commonwealth's claims
2 are going to affect the claims of your constituency and vice
3 versa.

4 And with the structure that I'm mandating here, which
5 is not only a filing in the master file, but a flagging of
6 issues that are specific to COFINA, and record keeping in the
7 COFINA docket, and we can even look into whether there is a
8 way to flag, you know, creditors to COFINA or whatever so to
9 make as feasible as possible sorting of records that will be
10 identified to specific debtors, I think honestly that we have
11 done as much as we can to make the onslaught of filings at
12 NEF, which make my telephone go off night and day already, as
13 manageable as possible.

14 MR. DUNNE: I'd like to respond to one point Your
15 Honor just made with respect to utilities, where Your Honor
16 said, well, what if they prevail with their litigation. I
17 still don't think the utilities claim ever gets inside the
18 COFINA debtor box. All that would happen, if they prevail in
19 litigation, is that some of the dollars that would otherwise
20 go to COFINA would go to the Commonwealth. And within the
21 Commonwealth assets, they would be increased by way as a
22 result of whatever the litigation is. And the utilities
23 claims would remain as to the Commonwealth, Commonwealth only.

24 And their property may be augmented, having prevailed
25 on that, but it would never be a liability in the COFINA

1 docket. That's my point on it.

2 One other point Mr. Bienenstock raised, and then I'll
3 yield the podium to anyone who wants to address it, he
4 mentions -- this is the first time we've heard of this, and
5 we've been actually asking for it, is where is the independent
6 fiduciary for COFINA. And they've been noticeably absent.

7 Mr. Bienenstock mentioned that one may surface for a
8 particular role. We'd like to be involved in that process to
9 make sure that person is truly independent, and truly has the
10 mantle of looking out for the best interest of the creditors
11 of COFINA. And has the typical fiduciary duties that you
12 would see for --

13 THE COURT: I think if Mr. Bienenstock wasn't on
14 notice of it before, he certainly is now. And I also assume
15 if you take the position that what Mr. Bienenstock is doing is
16 not satisfactory, I'll be hearing about it in filings.

17 MR. DUNNE: Thank you, Your Honor.

18 THE COURT: Thank you very much.

19 Is there anyone else?

20 MR. MAYER: Good morning, Your Honor. For the
21 record, Thomas Moers Mayer of Kramer Levin Neftalis and
22 Frankel, counsel to funds managed by Oppenheimer Funds, funds
23 managed by Franklin Advisers, and the First Puerto Rico Family
24 of Funds managed by Santander Asset Management.

25 My clients are all mutual funds who invest on behalf

1 of hundreds of thousands of individual investors, including
2 thousands of Puerto Ricans. And we call ourselves the Mutual
3 Fund Group. The Mutual Fund Group holds over 3.5 billion
4 dollars in COFINA bonds, and more than 3.6 billion dollars in
5 additional bonds issued by the Commonwealth and other
6 instrumentalities. We think we may have more invested in
7 Puerto Rico than any other group.

8 Turning to the Joint Administration Order, we filed a
9 short objection. And I will just focus on one piece of the
10 puzzle for why we asked for what we asked for. Rule 1015(b)
11 does ask the Court to consider prejudice of creditors from
12 conflicts, and we have a potential solution which I know
13 Mr. Bienenstock doesn't like, which is creditors of COFINA be
14 recognized as having standing to advance the interests of
15 COFINA in the Commonwealth case.

16 Now, this case, like a Chapter Nine, is a little bit
17 different from Chapter 11 as follows: The normal Chapter 11
18 case, we have Section 363, and the debtor has to run into
19 court and get permission to do things. But in a Chapter Nine
20 or Title III case, that is not true; and therefore, creditors
21 always have to be moving first.

22 And the time pressures here are substantial. The
23 date in question here, and this will come up later in the bank
24 account motion, so I'll just be brief here, is July 1, because
25 on July 1, there's 120 million dollars that is scheduled to

1 flow to COFINA. That's the first installment. Every month
2 there will be 120 million dollars.

3 And that's real money. And we think it's our money.
4 Other people think it's their money. But it's real money, and
5 there has to be a resolution or a decision for what happens to
6 that 120 million dollars.

7 Now, the Commonwealth, as you know from reading our
8 papers, passed legislation which certainly could be
9 interpreted as empowering the Commonwealth to just sweep that
10 money on July 1. And to avoid that, we would have to take
11 action in the Commonwealth case.

12 Now, we believe we might have standing -- should have
13 standing as secured creditors anyway, because that money is
14 pledged to us. But to the extent COFINA needs to protect
15 itself against a sweep by the Commonwealth, creditors of
16 COFINA will have to assert that themselves.

17 As you pointed out earlier today, you understood
18 there were representative groups of creditors who were
19 prepared to fight out these issues between each other. And I
20 think that is correct, and I think that is what will happen.
21 But as a technical matter, we don't want to have to worry
22 about a standing hurdle of any sort if in approximately 45
23 days we are going to need an Order in the Commonwealth case
24 that limits the ability of the Commonwealth to just take our
25 money. And that's why we suggested an easy fix to the

1 1015(b) .

2 The suggestion is that creditors of COFINA be granted
3 standing to assert COFINA's rights in the Commonwealth case.
4 Should this be a problem, all parties can object. And Your
5 Honor always retains jurisdiction to tell somebody not this
6 time. But we thought it would reflect the reality of the
7 situation, and the impending fight over 120 million dollars to
8 put that in place. And I'm happy to answer any questions you
9 may have.

10 THE COURT: Well, I think I'd like to ask Mr.
11 Bienenstock to speak specifically to that standing issue, and
12 then we'll see how much more we need to go into that. Thank
13 you. So if you'll stand to the side, Mr. Mayer, you'll be
14 back.

15 MR. BIENENSTOCK: Your Honor, Martin Bienenstock with
16 Proskauer for the Oversight Board.

17 We haven't taken a position on whether Mr. Mayer's
18 clients will have standing in the Commonwealth case in respect
19 to the matters he just described. He may well, and he may
20 well not. It's going to depend on who holds the debt, what
21 the issue is, you know, all the constitutional credential
22 elements of standing. And all I was saying before is it's
23 not -- it's not the right time in the Joint Administration
24 Procedural Order to determine standing in what might be a very
25 significant contested matter or adversary proceeding.

1 We'll be happy to tell them well in advance if they
2 tell us the claim they want to make whether we'd agree to
3 their standing. And it's not something that we would take
4 issue with unnecessarily.

5 Also, and it's going to come up in a few minutes in
6 connection with the bank motion, and Mr. Mayer knows about
7 this, we are hopeful that there will be an understanding that
8 the normal, ordinary course transfers to COFINA under the
9 original COFINA documents back and forth from COFINA to the
10 Commonwealth, because they have a rigamarole on we get ten
11 months in taxes, and the rest is moot. We'll go forward as
12 normal without this application of Law 26 for a certain time,
13 and if the Commonwealth ever feels it wants to end that
14 understanding, it will give at least 30 days notice.

15 So I think we have this issue under control, but for
16 right now our position is very simply, they may well have
17 standing. They may not. The Joint Administration Motion is
18 simply not the right vehicle to make that determination.

19 THE COURT: Thank you.

20 MR. MAYER: I'm happy to defer on the banking until
21 we come to that. Mr. Bienenstock is directionally correct, we
22 like to think we are the folks who are, first of all, dealing
23 with that, but perhaps we should wait until it comes up.
24 Maybe other people want to speak.

25 THE COURT: It does seem to me that addressing the

1 standing issue in the Joint Administration Order is premature.
2 And if there is to be litigation, it means there will be
3 another section in each brief about standing, if it's a
4 disputed issue. But then it can be presented to me, and
5 determined in context if indeed it's controversial at all.
6 But to create permanent standing to litigate an undefined
7 portfolio of issues in the Joint Administration Order seems to
8 me inappropriate.

9 MR. MAYER: Thank you, Your Honor. I respect your
10 ruling.

11 THE COURT: Thank you.

12 Ms. Goldstein.

13 MS. GOLDSTEIN: Yes, Your Honor. I picked a bad
14 seat.

15 THE COURT: Sorry. A little challenging there.

16 MS. GOLDSTEIN: Okay.

17 Good morning, Your Honor.

18 THE COURT: Good morning.

19 MS. GOLDSTEIN: Marcia Goldstein on behalf of
20 National Public Finance. National Public Finance, like Ambac,
21 is a long-term player on this island. We are an insurer of
22 approximately 3.6 billion of debt of the Commonwealth, and
23 certain of its instrumentalities and authorities. And we'll
24 be around for a long time, particularly with respect to
25 COFINA.

1 And we -- particularly with respect to GOs and
2 COFINA, we insure 881 million of GO bonds and 1.1 billion of
3 created senior COFINA debt. So we have other remarks to make.
4 We'll wait until the appropriate time. But I did want to
5 speak to joint administration.

6 Mr. Bienenstock is correct in that we do not object
7 to joint administration for procedural purposes, but I do want
8 to echo the concerns with respect to the conflict that Mr.
9 Dunne and Mr. Mayer have spoken to. This may be premature,
10 but Mr. Bienenstock was proposing a, quote, solution where
11 some subset of the GDB board might negotiate a settlement with
12 the Commonwealth if the GO and COFINA creditors can't resolve
13 issues.

14 That in itself is highly questionable, Your Honor.
15 We have to understand the conflict here. Mr. Bienenstock has
16 said that the Oversight Board hasn't taken a position with
17 respect to the COFINA assets. The Oversight Board and
18 Commonwealth have taken a position by certifying a fiscal plan
19 that just takes the assets. Your Honor mentioned that
20 yourself.

21 So we have to be very, very wary of the conflict. We
22 -- although we do not object to procedural consolidation, we
23 did say that we want to make sure that COFINA creditors have
24 the right to assert the position of COFINA. As Mr. Dunne
25 said, if there's going to be a fiduciary for COFINA, we want

1 to have a part in the selection and understanding of the true
2 independence, otherwise I think the creditors should act. To
3 say that the Commonwealth will negotiate with another group
4 that will also be represented by the same counsel, that's a
5 lot of home cooking as far as I'm concerned. We've seen other
6 evidence of that here.

7 So we just wanted to make sure that our position is
8 known with respect to procedural consolidation. I think our
9 request that COFINA creditors be able to assert the rights of
10 COFINA is actually related to Mr. Mayer's request. We think
11 that's the only way that COFINA, at least at this point, can
12 be adequately represented.

13 THE COURT: Thank you.

14 MR. ZAKIA: Good afternoon, Your Honor. Jason Zakia
15 of White and Case on behalf of the Puerto Rico Funds. We are
16 a group of on-island mutual funds that hold 625 million
17 dollars worth of COFINA bonds.

18 My benefit of going towards the end is most of my
19 points have been covered and acknowledged in Your Honor's
20 acknowledgment. I won't repeat them.

21 I wanted to raise two issues of clarification. One
22 I'm going to steal from Mr. Dunne's papers. He raised an
23 issue, and I don't know if it was addressed today. The
24 appointment of a committee may be very appropriate in the
25 Commonwealth case where there are a lot of unsecured

1 creditors. It may be a completely different story with regard
2 to COFINA, which does not have material unsecured creditors.

3 And as I understood Your Honor's ruling, the role the
4 Commonwealth committee would play in the COFINA case, which we
5 would suggest would be none, is not being addressed or
6 effected by Your Honor's ruling on this motion.

7 THE COURT: Correct. This motion and my ruling will
8 solely go to these administrative arrangements, and will be
9 without prejudice to any party's position as to the propriety
10 of anything that would smack in any way of substantive
11 consolidation, or whatever you want to call it, or the
12 legitimacy or legality of the fiscal plan's contemplation of
13 pooling of assets.

14 MR. ZAKIA: I just wanted to make sure I understood
15 that.

16 And the last point, Your Honor, I heard a little
17 differently what Mr. Bienenstock said in response to Your
18 Honor's query at the beginning. And maybe I was just wrong,
19 but if I was right, I'd like to clarify. I thought that he
20 told you that the wall or the separate independent fiduciary
21 point had already been put in place and was in existence.

22 And if I'm wrong about that, that's fine, but if it
23 is, I think we'd all like to know who that person is or who
24 that entity is, and who speaks for the independent fiduciary
25 for COFINA in these cases. If it's still to come, I echo

1 everyone else's point that we'd like to be involved in the
2 process. But I thought I heard him say it had already been
3 selected.

4 THE COURT: Mr. Bienenstock, would you like to offer
5 clarification?

6 MR. BIENENSTOCK: Yes, Your Honor.

7 COFINA already has an independent board, and by that
8 I mean the government of Puerto Rico can't tell it what to do.
9 When I said in my status report that absent a settlement among
10 the parties, the Oversight Board would be interested in having
11 a settlement between COFINA on the one hand and the
12 Commonwealth on the other, I was not specific as to who on the
13 COFINA side.

14 And this is something where if we don't think
15 COFINA's independent board is independent enough, we will take
16 steps to get to independent directors or board members who are
17 totally independent with probably new independent counsel to
18 negotiate against the counterpart on the Commonwealth's side.
19 That has not been done yet, and I was not specific, so I can
20 understand how people got different impressions.

21 THE COURT: And you acknowledge that you are on
22 notice that there is deep and intense concern on the COFINA
23 creditor side as to how this ultimately gets formulated if
24 that's necessary?

25 MR. BIENENSTOCK: Absolutely. And we might actually,

1 | because of that, approach Your Honor for a ruling before we
2 | start, so we don't go through the whole process and then are
3 | told we didn't have an independent enough party. So we'll
4 | leave that for how it shakes out.

5 | THE COURT: Obviously I have a lot of work on my
6 | plate, but transparency is important in these proceedings.
7 | And so a method that, if these matters are controversial, will
8 | make the steps and the issues as transparent as possible is
9 | appropriate from my perspective.

10 | MR. BIENENSTOCK: Thank you.

11 | THE COURT: Thank you.

12 | MR. KIRPALANI: Good morning, Your Honor.

13 | THE COURT: Good morning.

14 | MR. KIRPALANI: Susheel Kirpalani for Quinn Emanuel
15 | on behalf of the COFINA Senior Bondholder Coalition, and
16 | sometimes we're called the Seniors.

17 | We did file an omnibus objection to the three
18 | motions. I may not need to rise again. I recognize how much
19 | you have on your docket today, but I thought I would speak on
20 | the joint administration. And then just give you a couple of
21 | minutes of remarks of who we are in this entire process, as
22 | well as the view of --

23 | THE COURT: A couple as in about 90 seconds.

24 | MR. KIRPALANI: Absolutely, Your Honor. Absolutely.

25 | THE COURT: Thank you.

1 MR. KIRPALANI: With respect to joint administration,
2 Your Honor already presaged how we thought the issue should be
3 resolved with a clear stamp on the front page of various
4 motions to indicate to creditors at large does this affect the
5 property of your debtor or not, and if not, then go back to
6 bed.

7 So that I think is perfect, and we are fine with the
8 Joint Administration Motion being granted with Your Honor's
9 comments and clarifications. And we appreciate how much care
10 you've put into what seems to be an administerial issue, but
11 as you've heard, could have substantial ramifications.

12 They say, Your Honor, that away from the Joint
13 Administration, they say the debtor you know is better than
14 the debtor you don't. I'm not so sure about that. And the
15 reason I say that is it remains to be seen. And what PROMESA
16 is -- I was involved personally in the drafting, as were many
17 in this courtroom. This statute is novel. It has some
18 parallels to Chapter Nine, some parallels to Chapter 11, and
19 some truly unique issues.

20 One of those issues, and it really does speak to what
21 Mr. Bienenstock has been discussing for the first time this
22 morning in open court about some yet to be determined
23 independent form of COFINA. Your Honor, the Statute of
24 PROMESA is very clear, and this was a bone of contention
25 during the drafting, so I remember how clear it is. There is

1 only one representative of the debtor with standing to propose
2 a plan, to sue and be sued, and that is the Oversight Board.
3 It is not some future, pragmatic, unnamed independent
4 fiduciary which no COFINA creditor has seen or heard of in the
5 last two years.

6 And so the idea we're going to borrow some pragmatism
7 from Chapter 11 and introduce and import it here, you've heard
8 already some concerns that were made. I know Your Honor is
9 not prejudging anything, but I wanted the Court to be aware
10 that the specific statute is Section 301(c)(7). That is very
11 clear who the Trustee in bankruptcy is.

12 What PROMESA is -- and I know Your Honor's
13 experienced in Chapter 11, but what PROMESA is is essentially
14 a Chapter 11 trustee case from the get go. That means
15 Mr. Rapisardi, although I love Mr. Rapisardi personally, his
16 client is AAFAF, which thus far has worn many hats. They seem
17 to forget the COFINA hat in the closet every time they try to
18 take any step whatsoever, but they do have many hats, GDB
19 representative, the Commonwealth representative, the COFINA
20 representative.

21 All that stopped upon the commencement of Title III,
22 and the statute is crystal clear on this. So we do hope that
23 the debtor we don't know, which is the Oversight Board, will
24 take the responsibility that Congress gave it and use that,
25 and use it wisely, because our clients, we hold two and a half

1 billion dollars of COFINA senior bonds. That's one-third
2 approximately of the COFINA senior class of creditors.

3 We have offered many solutions. We have been
4 rebuffed at every turn. And we will afford the Oversight
5 Board every opportunity that's conceivable to try to engage
6 with us in good faith, negotiate a solution for all of the
7 people of Puerto Rico, including financing at the lowest
8 possible cost. That's why COFINA was created, and that's why
9 Mr. Rapisardi's clients statutorily promised and committed
10 never to impair the COFINA structure. And of course they've
11 done the exact opposite, Your Honor.

12 Thank you.

13 THE COURT: Thank you.

14 MR. ROSENBERG: Good morning, Your Honor. Andrew
15 Rosenberg from Paul, Weiss, Rifkind, Wharton and Garrison,
16 counsel for Ad Hoc Bondholder Group.

17 THE COURT: Good morning.

18 MR. ROSENBERG: Good morning. We did not file any
19 papers, because we actually support the Joint Administration
20 Motion, and still do. We view it purely as a procedural
21 mechanism that doesn't have any substantive impact.

22 I did want to rise, though, just to address a couple
23 of the statements that were made. Just a quick five seconds
24 on our group or ten seconds on our group. We hold
25 approximately three billion dollars worth of GO bonds. Our

1 group is comprised of mutual funds, municipal bond funds, and
2 hedge funds.

3 And I think a couple of points I'd like to correct
4 is, first, I guess we are the "the" or the "they" that
5 everyone keeps referring to as the other creditor group
6 opposing. And I don't think this should necessarily be looked
7 at just as an intercreditor dispute. The monies that
8 ultimately the Commonwealth is looking to keep or recoup or
9 make clear are its property, these are actually Commonwealth
10 funds. They're not GO bondholder funds. They are
11 Commonwealth funds that the Commonwealth is looking to keep.

12 The GO bondholders by virtue of their first priority
13 under the constitution on all available resources simply have
14 first claim to those monies once they're returned, but I think
15 the dispute is not simply as it's portrayed of GOs versus
16 COFINAs. I think it's Commonwealth versus COFINA to some
17 degree in terms of whose money it is, and then we simply have
18 first claim on it.

19 Two, we share actually -- while we think the motion
20 is fine, we actually share many of the same concerns in terms
21 of the overlap as to who's looking out for who. I think that
22 this is a Board appointed by the Governor. I think it's
23 filled with government officials. And we too are aware you
24 may need independent fiduciaries or separate counsel to look
25 out for both sides, because they are tied at the hip and

1 fighting over these same resources here. So we share that
2 concern, also.

3 Similarly, under the legal theory what's good for the
4 goose is good for the gander, given the overlap of the cases,
5 if people are being granted -- and I don't think that's for
6 today. I agree with Your Honor wholeheartedly, and
7 Mr. Bienenstock, if people are being granted standing in one
8 case on certain issues, I think the parallel should also be
9 true.

10 So we just wanted to make sure Your Honor had an
11 accurate framing of this, in terms of that we share many of
12 the same concerns about the COFINA, about how this is handled,
13 and making sure a fair resolution through settlement or
14 litigation is ultimately achieved. Thank you.

15 THE COURT: Thank you.

16 I think we have heard everyone on the Joint
17 Administration Motion, and I thank you all for your brevity.

18 I have carefully considered all of the arguments and
19 submissions. The objections are overruled. And subject to
20 the modifications that I have directed the debtors' counsel to
21 make, the Joint Administration Motion, which is for
22 administrative purposes only, is granted. And I direct the
23 counsel for the debtors to settle an Order on the five days
24 notice that we talked about.

25 And so next up on the disputed list I believe is --

1 I'm sorry.

2 MR. BIENENSTOCK: Your Honor, there are just two
3 left. And the next is the case management. But since I
4 started talking about the bank motion, if it's okay, while
5 it's fresh in everyone's minds, we would take that next.

6 THE COURT: That's fine.

7 MR. BIENENSTOCK: Thank you.

8 Your Honor, just a few short preliminary comments
9 about this motion that we filed in order to -- well, it was in
10 reaction to the concern of the banks, whether they would honor
11 Commonwealth checks after we filed the Title III petition.

12 And we just wanted them as conduits to know that they
13 had no liability for honoring checks presented to it. Three
14 parties have taken issue with that by my count. I think it's
15 Ambac, the Mutual Fund Group, and the COFINA seniors. And
16 they raise a lot of arguments, starting with case in
17 controversy under Article III of the Constitution, subject
18 matters jurisdiction, et cetera. But at the heart of the
19 matter, this is really a concern that they don't want to
20 sanction by this Motion and Order the Commonwealth taking
21 money that COFINA believes is its property.

22 And so that's why we have been working on a
23 resolution where as a practical matter, the Oversight Board
24 would not want that to happen without Court approval.

25 THE COURT: What's the "that"? I just lost your --

1 MR. BIENENSTOCK: That under the original deal,
2 documents setting up COFINA, where sales and use taxes are
3 transferred to COFINA, and some of them are transferred back
4 to the Commonwealth, that under that original routine, that
5 the Commonwealth would not change that and take money that it
6 previously did not take without Court approval.

7 THE COURT: So you are not planning in the near term,
8 without an application to the Court, to --

9 MR. BIENENSTOCK: Well, where we've gotten to, so as
10 to rope in all the relevant parties, because the Commonwealth,
11 as Mr. Rapisardi explained before, has a lot of powers on its
12 own, political powers and otherwise, that the Oversight Board
13 cannot control or does not control.

14 So where -- the resolution that we'd like to have is
15 that for a fixed -- well, until the Commonwealth gives 30 days
16 notice, all parties can be assured that the customary
17 transfers of money back and forth between the Commonwealth and
18 COFINA would not change. And if ever the Commonwealth gives
19 that 30 days notice, then at that time parties would have to
20 approach the Court if they couldn't reach another
21 resolution.

22 And we are hopeful, based on discussions with both
23 sides, that with that, there is no concern about giving the
24 banks comfort that they can honor checks without liability,
25 because although some of the objections label the banks as

1 intermediate transferees, that's not the way we see it.

2 They're just conduits. It's never their money. It's money
3 going through them from one account to another account.

4 And this is solely -- and as Your Honor can imagine,
5 this was quite a concern. We were fortunate in convincing the
6 banks that they should continue honoring checks pending this
7 hearing. If they feel uncomfortable honoring them, that could
8 close down the Commonwealth, which is a horrible event.

9 So we're hopeful that the resolution I just explained
10 will be acceptable to both the Commonwealth and the
11 bondholders based on discussions we had leading up to this.

12 THE COURT: Right. So I need to hear positions on
13 this.

14 MR. BIENENSTOCK: Right.

15 THE COURT: So I see Mr. Dunne.

16 MR. DUNNE: Yes.

17 THE COURT: Yes. And then Mr. Mayer.

18 MR. DUNNE: Your Honor, I haven't seen the language
19 yet, and the devil's always in the details here, but let me
20 start with a point that Mr. Mayer raised previously, which is
21 we don't have Section 363 applicable to these cases. And as a
22 result, we need to be extremely vigilant. We need parties to
23 be incentivized to raise issues they see occurring if there's
24 a request to transfer funds or to divert property. We don't
25 want to find out about those things after the fact.

1 And our issue with the Order is that this seemed to
2 allow somebody to just comply with the request; have, you
3 know, proactive exculpation; and then not have to worry about
4 bringing it to our attention or the Court's attention.

5 What Mr. Bienenstock proposed does get to the heart
6 of what we're concerned about, so I would like to see the
7 language. If it's crystal clear what we're talking about is
8 allowing only those transfers that are consistent with the
9 historical practices to perform the original documents without
10 effect to the recent legislation, Law 26 and the like, that
11 may work.

12 I'm also assuming that it's not giving
13 forward-looking exculpation to the extent that not
14 withstanding Mr. Bienenstock's promise of 30 days notice, if
15 they in derogation of that went out to a bank and said we'd
16 like to transfer these funds, that that bank is going to be
17 incentivized to raise their hand, because they're not going to
18 be immunized from any liability for that.

19 So it's something I think we could potentially work
20 with, but I'd like to go through the details on that.

21 THE COURT: Thank you.

22 And so just logistically, Mr. Bienenstock, would you
23 propose that I, you know, hold this motion under advisement
24 pending negotiation of a Consent Order?

25 MR. BIENENSTOCK: Yes, Your Honor. But I think we

1 should hear also from the Commonwealth, and if Mr. Mayer has
2 something to say, so we know if we're on a fool's errand or
3 not. I don't think we are based on discussions I've had, but
4 people sometimes change positions.

5 THE COURT: So Mr. Mayer, do you want to hear
6 Mr. Rapisardi first? Do you --

7 MR. MAYER: I'm happy to wait for Mr. Rapisardi.

8 THE COURT: Thank you.

9 MR. RAPISARDI: Very briefly.

10 THE COURT: I'm sorry. You can sit down again.

11 MR. MAYER: Thank you, Your Honor.

12 MR. RAPISARDI: Very briefly, Your Honor, in response
13 to that. John Rapisardi --

14 THE COURT: Wait. I can't hear you. You either have
15 to shout or come to the podium.

16 MR. RAPISARDI: I'm sorry, Your Honor.

17 THE COURT: And actually, everyone should speak from
18 the podium so the sound goes to the overflow courtrooms.

19 MR. RAPISARDI: My apologies.

20 THE COURT: Thank you.

21 MR. RAPISARDI: John Rapisardi from O'Melveny & Myers
22 on behalf of AAFAF.

23 The proposal that Mr. Bienenstock is suggesting with
24 respect to 30 days notice in advance of use of funds in
25 accordance with the scope of practice is something that is

1 acceptable. Obviously the devil is in the details in terms of
2 working out the Order, and we'll work with everyone to make
3 sure we have a mutually acceptable Order.

4 THE COURT: Thank you, Mr. Rapisardi.
5 Mr. Mayer.

6 MR. MAYER: Directionally, Your Honor, we are hopeful
7 that this works. I have one client in the courtroom who has
8 already indicated that this should work. I need to check with
9 two others, but we are hopeful that language can be worked
10 out.

11 I just want to put one specific item directly
12 relevant to this, and one sort of off to the side. The 120
13 million starting July 1 is really the critical issue, and what
14 we're focused on is making sure we understand that money flows
15 back and forth in the ordinary course with the preceding deal
16 documents. That's fine. That continues. But come July 1, in
17 accordance with those documents, 120 million dollars is due to
18 be paid to COFINA. And our view as to what we're talking
19 about here, and I think we are, is that before anybody grabs
20 that 120 million dollars, we're going to get 30 days. That's
21 really the focus. And I don't think I'm saying anything
22 different.

23 MR. RAPISARDI: That is correct. (Nodding head up
24 and down.)

25 MR. MAYER: Okay. So that is the item that is

1 directly relevant.

2 Now, one that is sort of off to the side, there are
3 actually two deadlines. And if I may take literally 60
4 seconds on a related topic, Your Honor, July 1 is the 120
5 million dollar issue. On June 1, we have a 60 million dollar
6 issue. This relates to something Mr. Bienenstock raised in
7 his opening, and I think it's appropriate to raise here,
8 because it's kind of related.

9 There's a payment due by the Trustee of the COFINA
10 bonds on June 1. And the Seniors, represented by
11 Mr. Kirpalani, take the position that upon a default, all the
12 money goes to them. AAFAF, as I understand it, takes the
13 position that no default has yet occurred. My people, who are
14 primarily -- whose holdings are focused on the juniors,
15 although we do have substantial seniors, take the position
16 that under the documentation, until debt has been accelerated,
17 if debt has been accelerated, that money continues to flow
18 without acceleration to the people whose money is due and
19 payable.

20 The indentured trustee, as I understand it, takes the
21 position that it wants this Court to tell it what to do. We
22 are in support of an interpleader hearing on this issue
23 subject to Your Honor's availability. Your calendar is yours
24 to control, but we would support a hearing on this prior to
25 June 1.

1 My understanding from Mr. Kirpalani is that the
2 seniors have no objection, to the extent Your Honor can make
3 the time, to schedule a hearing before June 1 so that Your
4 Honor can look at the documents, hear people, and tell Bank of
5 New York what it's supposed to do.

6 It's not an enormous dollar amount, but it has
7 potential ramifications for the case in terms of creating
8 defaults that might not otherwise exist. And therefore, we
9 would urge Your Honor to schedule a hearing on the motion.

10 If I've misstated anything for Bank of New York --

11 THE COURT: I was planning to cue up the Bank of New
12 York Order to Show Cause issue in terms of scheduling and time
13 frame after we have done these other motions, so if you would
14 bear with me on that.

15 MR. MAYER: Certainly. I'm sorry then to have gone
16 out of sequence.

17 THE COURT: Thank you.

18 MR. KIRPALANI: Your Honor, I'll keep it very brief.
19 Susheel Kirpalani from Quinn Emanuel on behalf of the COFINA
20 Seniors. I'm not going to address the issue Your Honor is
21 bringing up later today.

22 With respect to this proposed solution to the bank
23 account's motion which we did object to on the grounds in part
24 on Article III, case in controversy, but with respect to
25 Mr. Bienenstock and perhaps Mr. Rapisardi are willing to

1 provide blanket comfort Orders to banks that may be instructed
2 by AAFAF to invade COFINA property, we took significant issue
3 with that prospect. And frankly, you have to really read
4 between many pages to see that that's what they are trying to
5 do, since banks and bank accounts are not even defined terms
6 in the papers. And debtors was defined jointly, which relates
7 to the prior issue.

8 With respect to this, we'll give folks 30 days notice
9 and then creditors should run into court with their hair on
10 fire, all I can say, Your Honor, is it doesn't necessarily
11 seem to me as being fair process. If the debtor, one debtor,
12 the Commonwealth, seeks to, I don't know, lift the stay and
13 invade another debtor's statutory property for which my
14 clients, and Mr. Mayer's clients, and Ms. Goldstein's clients,
15 and Mr. Dunne's clients all have Fifth Amendment protections
16 against such invasions, they need to come to court. They need
17 to tell the Court exactly what they're trying to do.

18 Sending us a notice, we have no idea what this is
19 going to look like, all I will caution the participants here
20 is getting a letter that says we may try to invade or divert
21 some COFINA property at some point in the future, for some
22 unspecified amount, for some unspecified purpose, for which we
23 don't know if we're going to provide any adequate protection
24 for your liens, I think is creating an impossible situation.

25 Mr. Mayer has already told the Court what the

1 elephant in the room is, and that is the fiscal year starts
2 July 1. COFINA is entitled to all the dedicated sales tax
3 commencing July 1.

4 And right now there's no issue, because COFINA's
5 house has been filled for the fiscal year for the last four
6 months, five months. So it's come July 1 that all of the
7 sales tax collected at the merchant level and sent to Banco
8 Popular as the agent for COFINA, that's when it all starts
9 going to COFINA.

10 And under the fiscal plan that's been certified, what
11 no one's telling Your Honor is they have to access that cash
12 starting day one. So why are we coming up with a procedure
13 that's frankly a bit artificial to say maybe we're going to
14 need the money, maybe we'll send a notice out, and maybe
15 creditors will want to run to court to try to get Your Honor's
16 attention?

17 I think it should be a more organized and thoughtful
18 process than that, Your Honor.

19 THE COURT: Thank you.

20 Mr. Bienenstock.

21 MR. BIENENSTOCK: Thank you, Your Honor.

22 I want to correct one statement. Mr. Kirpalani is
23 mistaken. That COFINA money that they believe under the
24 certified fiscal plan the Commonwealth needs as of July 1,
25 that's just not the case. We built in lots of time for this

1 issue to be settled or litigated precisely so we wouldn't need
2 to have some type of emergency on July 1.

3 THE COURT: Thank you for making that clear. So I
4 will hold this under advisement pending an attempt to
5 negotiate a consensual document. I think I'm hearing very
6 clearly from the creditors' side a concern about specificity
7 of the notice, and also some mechanism that will make the bank
8 less than sanguine about the prospect of the notice. Whether
9 that is that the exculpatory provision only applies by its
10 terms for these ordinary course historically precededented
11 transfers, and then perhaps it's the obligation of the
12 Commonwealth then to apply along with the 30-day notice for a
13 Court Order that would provide protection for some specific
14 new disbursements of the money, that may be something that
15 goes to allay some of the concerns here.

16 So I urge everyone to be candid, imaginative, no
17 vaguer than is necessary. And you'll get what is necessary
18 done to allow this ordinary course to float, and the larger
19 more substantive negotiations go on.

20 All right. So that is under advisement pending
21 further notice.

22 All right. So does that bring us then to the Case
23 Management Order?

24 MR. BIENENSTOCK: Yes, Your Honor. Mr. Rutsky will
25 handle that.

1 THE COURT: Thank you.

2 And so Mr. Rutsky, as I did with the -- one of those
3 other Orders, I think it was Joint Administration, I would
4 like to flag, before you speak in response to the objections
5 and speak in support of the motion, some specific concerns
6 that I have and modifications that I would require from my
7 case management perspective.

8 MR. RUTSKY: Sure.

9 THE COURT: And of course you can tell me if those
10 don't work for you all or anyone, why that is, but I want to
11 put them on the table.

12 MR. RUTSKY: One question, Your Honor, before we do
13 that?

14 THE COURT: Yes.

15 MR. RUTSKY: And I welcome your comments. We
16 submitted to the Court yesterday a redline version of the
17 motion which attempted to --

18 THE COURT: My comments are based on the redline
19 version. I read it.

20 MR. RUTSKY: Thank you.

21 THE COURT: And that did address some of my issues,
22 but not all of them. And I notice it addressed some of the
23 issues that had been raised in the objections, but not all of
24 them. So I apologize in advance. Some of these are little,
25 and some of these are bigger. And I'll try to speak

1 conceptually where possible, but clearly.

2 So first of all, in paragraph four of the Order, and
3 also the introductory paragraph of the procedures, there's a
4 general overriding provision that says that the Order
5 overrides all other relevant rules. There are some rules that
6 we don't have the freedom to override, and so I would just ask
7 that in both of those places, a clause be added to say that it
8 supersedes the other rules to the extent that such variance is
9 permitted by the relevant rules. And to the extent we have a
10 conflict, we can work on that, but I think we have to say
11 that.

12 And then in the procedures, page six, the second
13 paragraph of the markup, you say that there is access to
14 documents on the District Court website. Technically, there's
15 a pass through hyperlink that takes you to the Bankruptcy
16 website, so say through the District Court website. I'm just
17 trying to be as clear for people as possible.

18 And again, on the availability of copies, say that
19 they're available from the District Court Clerk pursuant to
20 the District Court procedures and miscellaneous fee schedule
21 of the District.

22 Then with respect to courtesy copies for the Court,
23 the general provision for standard group notice, I will need
24 copies sent both to the chambers here and to my chambers in
25 New York. And the attention to suite number for the New York

1 chambers is 3212.

2 And I also want to require that all paper courtesy
3 copies, and I guess indeed even e-mailed courtesy copies,
4 include the ECF header information, so that it is easy to see
5 what docket event the particular paper relates to.

6 Again, on page nine of the procedures in paragraph E,
7 the reference should be to the Puerto Rico Bankruptcy website
8 this time. I think that's for the location of the mailing
9 list. So that will actually be in the Bankruptcy Court ECF
10 system.

11 And with respect to motions seeking an evidentiary
12 hearing, I would like a requirement that the evidentiary
13 hearing request be flagged prominently on the motion paper, or
14 if it's coming in the opposition paper, on the opposition
15 paper. And the Order has to give the Court -- explicitly note
16 that the Court retains discretion regarding the scheduling of
17 evidentiary hearings.

18 And then as to the briefing schedule, I know that in
19 bankruptcy matters in general, and in this one in particular
20 with all of its moving pieces, everyone expects to move
21 quickly, but given the sheer volume that's going to go on
22 here, I need some more time after fully briefing, because
23 sometimes I'll also have travel, than you've contemplated in
24 the Order.

25 And so I am asking, for this, at this point, I may

1 need to ask you to back it up at some point, but to start I
2 want deadlines for objections to be ten days before the
3 hearing, and not seven. And the deadline for replies, five
4 days before the hearing for parties, and four days before the
5 hearing for the debtors and any committees.

6 And with respect to communications with chambers,
7 other than scheduling requests from the debtors, and I
8 understand that there are objections about the -- you know,
9 debtors' prominence in scheduling, and we'll hear those if
10 they're still going on, but communications with scheduling
11 requests other than from the debtors must be initiated by
12 urgent motion or -- urgent motion if some action by the Court
13 is being requested. And there should be reasonable good faith
14 communication beforehand in an effort to resolve or narrow the
15 issues that are being brought to the Court in that urgent
16 motion request.

17 And so the urgent motion should have just a
18 certification that that reasonable good faith effort has been
19 made under the circumstances, and if there is knowledge that
20 there is going to be an opposing position, the fact that
21 opposition is anticipated should be flagged. That will help
22 me in scheduling responses.

23 Other communications that are informative but not
24 requesting relief, to the extent you feel a need to file them,
25 should be labeled as an informative motion. The system in

1 | this Court and in the Bankruptcy Court doesn't contemplate
2 | letter communications, as in my home district, and I frankly
3 | do not want my chambers getting substantive telephone calls.
4 | I want it in writing, on the docket. Everybody sees it.

5 | I have a chambers e-mail address, which I want
6 | courtesy copies of the urgent motions e-mailed, and this will
7 | help me to deal with the ECF, NEF traffic, and make sure that
8 | I notice things that I need to notice. And so the courtesy
9 | copy of an urgent motion needs in the first instance to be
10 | e-mailed to Swaindprcorresp, which is c-o-r-r-e-s-p,
11 | @nysd.uscourts.gov.

12 | Those of you who have seen my District Court
13 | procedures know that I ask courtesy copies to be faxed in.
14 | Because we never know where we'll be, I've set up this e-mail
15 | box to basically be my proxy passage.

16 | In paragraph 3(c) on page 11 of the markup, the
17 | provision regarding inconsistent filings should have an
18 | exception for filings that have previously been authorized by
19 | the Court in response to an urgent motion establishing such
20 | scheduling. And 3(d) should have a specific reference to the
21 | urgent motion procedure, so that we know what we're talking
22 | about.

23 | Bless you.

24 | All motions, whether urgent or not, that are
25 | requesting relief, should be accompanied by a Proposed Order.

1 In IV(a), delete the telephone hearing procedure. As
2 I said earlier, I'm still working those mechanics out, and I
3 will put something out in writing once I have mechanics to
4 share. And then we can ultimately incorporate that into an
5 Order, but I'm not ready for that yet.

6 And I would like a provision that allows the Court to
7 give notice of intended *suisponte* amendments to the
8 procedures.

9 And as you saw in my Order scheduling this hearing, I
10 have a general requirement that people attending proceedings
11 in locations where I'm presiding in person refrain from
12 wearing perfumes and colognes. I have allergy issues. There
13 may be other people who have allergy issues. And so I thank
14 you all for that accommodation, but I'd like that to be
15 prominent maybe right after the first four omnibus hearings,
16 somewhere that people will see it.

17 So believe it or not, that's the end of my list.
18 Thank you.

19 MR. RUTSKY: Thank you, Your Honor.

20 We will make the changes, and assuming there's an
21 Order that's acceptable after having discussion, we will
22 submit it pursuant to the same procedures we discussed
23 earlier.

24 THE COURT: Thank you.

25 MR. RUTSKY: So Your Honor, I guess at this point in

1 time, I'm not sure -- we circulated these procedures in
2 response to the objections. We have not had a chance to
3 speak. There were eight objections, so I guess I drew the
4 short straw for this one.

5 We didn't have a chance to speak with the parties to
6 see what remaining issues there may be. I'm not sure --

7 THE COURT: So maybe I should ask for a show of hands
8 as to objectors who continue to have issues with the revised
9 proposal as further modified as outlined by me.

10 MR. BRILLIANT: (Raised hand.)

11 MR. MOLINA LOPEZ: (Raised hand.)

12 MS. GOLDSTEIN: (Raised hand.)

13 THE COURT: All right. So let's take the objectors
14 in order, and then you can respond to those.

15 MR. RUTSKY: Yes, Your Honor.

16 THE COURT: Sir.

17 MR. BRILLIANT: Good morning, Your Honor. Allan
18 Brilliant from Dechert LLP on behalf of Peaje Investments LLC,
19 which we believe is the largest uninsured 1968 resolution
20 bondholder.

21 THE COURT: Good morning.

22 MR. BRILLIANT: Your Honor, like Mr. Dunne, we commit
23 to the Court to work with the debtors' Oversight Board to
24 reach a resolution that will be a win win for everyone to
25 date. Unfortunately, our suggestions have not been taken up.

1 Mr. Bienenstock I think was referring to our client
2 when he was mentioning the HTA. We have litigation pending.

3 THE COURT: May I ask you to speak just a little bit
4 slower?

5 MR. BRILLIANT: Sure, Your Honor. I'm sorry.

6 I believe Mr. Bienenstock was referring to our client
7 when he referred to information that was currently pending in
8 the Federal District Court here in the District of Puerto Rico
9 in connection with HTA. We filed that Complaint. It's
10 obviously not under Title III, because HTA was not yet a
11 debtor in the case.

12 And Mr. Bienenstock was a little bit right, but made
13 some mistakes when he talked a little bit about what our
14 position is. We have what we believe are special revenue
15 bonds. I don't think the debtors disagree with that or the
16 Oversight Board disagrees with that, that our bonds are
17 special revenue bonds. We believe under PROMESA, Title III,
18 that special revenue bonds need to continue to be paid after
19 the commencement of a Title III proceeding.

20 So we believe that, you know, not with -- if you look
21 at Section 922, the stay doesn't apply, and the effect of all
22 the amendments is special revenues would continue to be paid.
23 We don't believe that 928 applies to our special revenues,
24 because our liens are statutory liens, not contractual liens.
25 And 928(a) and (b) only apply to statutory liens.

1 Even if 928 were to apply, we believe that the proper
2 method of calculating under 928(b) would be to only look at
3 the -- you know, we have at HTA a gross lien on toll revenues
4 in certain tolls. So we believe the expenses would be just
5 the expenses related to creating those tolls.

6 THE COURT: I am grateful for the level of insight
7 that you're seeking to give me here, but I would be even more
8 grateful if you would focus on things --

9 MR. BRILLIANT: Sure.

10 THE COURT: -- specific to the Case Management Order
11 at this point.

12 MR. BRILLIANT: Sure, Your Honor.

13 We continue to have three issues with respect to the
14 Case Management Order. First is with respect to Section
15 362(e) and (f) of the Bankruptcy Code. Congress in creating
16 PROMESA decided to include 362(e) and 362(f), and make them
17 applicable to these cases.

18 Under the Case Management Order, the Oversight Board
19 and the debtors would ask Your Honor to effectively make them
20 inapplicable by deeming that all parties have consented to,
21 you know, a waiver of their rights to a speedy hearing with
22 respect to motions to lift the stay under 362(e) and (f).

23 THE COURT: There was a slight revision of that
24 provision in the Amended Order that was filed last night that
25 I think tracked language that had been proposed by one of the

1 objectors that does include a waiver of 362(e) under certain
2 circumstances. I think if there's an application by urgent
3 motion for a tight schedule, and the Court denies it, then
4 there's a deemed waiver. But there is not the broad waiver
5 that was contemplated by the original draft.

6 Is that correct, Mr. Rutsky?

7 MR. RUTSKY: Yes, Your Honor. That is correct.

8 MR. BRILLIANT: Your Honor, we don't interpret the
9 language that way, but we still believe that that's sufficient
10 for our purposes.

11 Basically what the language does, Your Honor, is
12 allow parties to seek an expedited hearing. But if you don't
13 get the expedited hearing, we still view that the section
14 362(e) is waived. We don't believe it's part of a Case
15 Management Order, you know, the Court should consider on short
16 notice in the first day of the case. The debtors want this
17 Order to be binding not just on COFINA and the Commonwealth
18 creditors, but any other debtor that were to subsequently file
19 and be jointly administered.

20 There is no notice here. And the situations that
21 this could come up, Your Honor, are very varied. And, you
22 know, Congress has created this provision, and we don't
23 believe it should be amended as part of the Case Management
24 Order.

25 Your Honor in its ordinary scheduling of motions --

1 Your Honor has been a bankruptcy judge before, so you know how
2 this comes up. And Your Honor will be able to deal with this
3 on a one off basis. But we don't believe that it's
4 appropriate, you know, at this point in time for there to be
5 an Order at the onset of the case that takes away the parties'
6 substantive rights.

7 And basically what they're doing is effectively
8 trying to shift the burden here. Whereas Congress guaranteed
9 creditors that there would be an interim hearing within 30
10 days and a final hearing and ruling within 60 days, what the
11 debtors are trying to do is say basically, well, you know,
12 because of our case management issues and the fact that
13 there's only going to be omnibus hearings once a month, you
14 probably are not going to get a hearing within a month. But
15 if you can show, the burden shifts to you, that you have an
16 emergent need, you can come into court and ask for an
17 emergency hearing. But we don't think this is appropriate,
18 and it's just not the type of subsequent right that can be
19 modified in a Case Management Order.

20 Similarly, Your Honor --

21 THE COURT: And so what you would want, a complete
22 blanket carved out from the omnibus motion date norm for Lift
23 Stay Orders -- I get your point and your concern about the
24 deemed waiver and waiver provision. I also understand it to
25 be coming both from the debtors' case management perspective,

1 and from -- in some degree of consideration, from me, given
2 the breadth of potential players and breadth of issues in this
3 case.

4 And so I need something that is not going to give me
5 a free for all of 21-day notice, Lift Stay Motions, whenever,
6 wherever that I need to field. And so let me just put that on
7 the table for now. I'm going to hear also what the other
8 objections are and other suggestions.

9 MR. BRILLIANT: Yes, Your Honor. And I can make a
10 suggestion for now if you like or we can come back to it.

11 THE COURT: Sure.

12 MR. BRILLIANT: One of the things, we're in a vacuum.
13 We don't have a schedule from Your Honor as to when the
14 omnibus hearings will be. Whether they will be every three
15 weeks, every month, we don't really know. We don't know if
16 there's going to be gaps in them as well, you know. If Your
17 Honor's going to be on -- you know, have other trials or other
18 things that are going on, and there won't be, you know,
19 hearings for a lengthy period of time. So --

20 THE COURT: I hear you, so let me --

21 MR. BRILLIANT: So what I would suggest, Your Honor,
22 if you want --

23 THE COURT: I can tell you the time frames that I had
24 in mind. That might help.

25 So what I was thinking at this point is something in

1 the last week of June, something in the week of August 7th or
2 August 14th, something at the tail end of September, and
3 something in mid November, and then something in late
4 December. So that's sort of six weeks.

5 MR. BRILLIANT: So what I was going to suggest, Your
6 Honor, is that, you know, parties be able to, with respect to
7 the stay motions, to the extent that 362(e) is, you know,
8 applicable -- it's not applicable to all the stay motions, but
9 to the extent that 362(e) is applicable, that the party notice
10 it at the next scheduled omnibus hearing which is within the
11 30 days. And if it's not within the 30 days, there could be
12 communication. It could be filed by a motion or however Your
13 Honor wants, but basically to go to chambers and say we have
14 this motion, you know, we're entitled to have it heard within
15 30 days. There's not a hearing scheduled in the next 30 days.
16 You know, we'd like to have a hearing scheduled within 30
17 days.

18 It may very well be, Your Honor, based on what your
19 omnibus schedule is or based upon discussion with the other
20 parties, the other parties will agree to wait for the next
21 omnibus hearing, but it may be that they won't. But the
22 burden shouldn't be shifted on the parties to show an urgent
23 nature or, you know, that there's a -- we shouldn't have the
24 burden to prove we're entitled to an earlier hearing rather
25 than the next omnibus hearing.

1 THE COURT: All right. Doing a little negotiating
2 here from the bench, I sort of thought about that concept and
3 what I think I can work with and would be clear. And this is
4 something I thought about when I was playing with the first
5 version of this Order, is to say that if a movement to a stay
6 schedules the lift stay hearing more than 30 days out, meaning
7 they notice it up for an omnibus that's more than 30 days out,
8 then there is the deemed waiver so that we don't have to do
9 any more paperwork on that.

10 If the movant wishes to bring on the Lift Stay Motion
11 out of the ordinary course and within the 30-day period, then
12 we figure out the Lift Stay Motion. And I figure it out from
13 there, and there isn't a waiver of the 362(e) position.

14 Would that be acceptable to you?

15 MR. BRILLIANT: So --

16 THE COURT: I just don't want an ambiguity if someone
17 says all right, I want to cue up a Lift Stay Motion practice,
18 but I am content to wait until the omnibus date to have it
19 heard, so I'm just going to notice it up for the omnibus date,
20 I don't want any ambiguity as to whether there's a lurking
21 preserved 362(e) issue related to that.

22 MR. BRILLIANT: If you voluntarily schedule it
23 outside of the 30 days, then I think it's appropriate it be a
24 deemed consent. We can draft language that makes it very
25 clear that by doing so, you are consenting to that. We don't

1 have a problem with that.

2 And then I take it if there's not an omnibus
3 scheduled for the next 30 days, then we would have a procedure
4 of asking the Court to schedule a date within the 30 days?

5 THE COURT: Yes.

6 MR. BRILLIANT: Then that would be acceptable to us,
7 Your Honor.

8 THE COURT: Thank you. And I realize you are
9 speaking for your client and not anyone else.

10 MR. BRILLIANT: Yes, Your Honor.

11 THE COURT: So that's the proposal that's on the
12 table right now on that. Thank you.

13 Anything further?

14 MR. BRILLIANT: We have two other issues, Your Honor,
15 with respect to the Case Management Order. One was the way
16 the debtors have drafted the Order, they can file any pleading
17 on a non-omnibus hearing date. Whereas with respect to
18 non-debtors, you know, other than, you know, the emergency
19 motions, we're required to schedule on an omnibus hearing
20 date. We don't think that's fair.

21 All parties should start with procedural equality.
22 They may be the debtor. They may have a lot going on in the
23 case, but they're also involved in everything in the case.
24 We'll have a big team and a big staff and can handle things on
25 non-omnibus days if necessary. I don't think anyone has a

1 | desire to ask for a hearing convenient to the Court but not
2 | other counsel, but it should go the other way as well.

3 | The way we see this case going, Your Honor, when you
4 | combine the fact that they can do things on non-omnibus dates
5 | and others can't -- and the other thing we want to bring to
6 | your attention is with respect to the adversary proceedings.
7 | They don't want there to be a first hearing until the first
8 | omnibus hearing, more than 45 days after the -- you know, the
9 | Complaint is filed. This would be the first omnibus hearing
10 | date more than 45 days.

11 | So if hearing dates are six weeks apart, in theory
12 | you could have to wait 42 days plus 44 days. You might have
13 | to wait 87 days before you can file -- get your first, you
14 | know, hearing, status conference with respect to an adversary.
15 | The debtors, you know, under this aren't bound by that.

16 | The way we see what they're doing here, I'm not
17 | saying it's intentional, but under the guise of the Case
18 | Management Order, effectively there's a stay in effect with
19 | respect to creditor actions. Creditors, for instance, we
20 | believe we have this right -- this is why I wanted to give
21 | Your Honor a little background as to our client. We believe
22 | we're entitled to be paid even after a Title III occurred at
23 | HTA. We would want to be in court very soon, as quickly as we
24 | could with respect to that motion. We don't want to have to
25 | wait and have it be delayed.

1 I suspect that most of the issues that are going to
2 be filed here, most of the complaints, are going to be against
3 the debtors, you know, not necessarily by the debtors. But
4 they have the opportunity through the Case Management Order to
5 expedite things. Whereas we do not, because we're required to
6 only file on the omnibus dates. Although they are a party to
7 this case, and they are going to be --

8 THE COURT: You have the urgent motion to request a
9 variance from the option. And I realize that that still isn't
10 entirely symmetrical, but the revised Order does give a party
11 wishing to ask, should something come up out of the omnibus
12 schedule, the ability to do that.

13 And I'm telling you to call it an urgent motion, and
14 copy it to my e-mail box so I notice it. At the end of the
15 day, the scheduling will be up to me, but the proposed Order
16 sets norms. It doesn't preclude something else.

17 So I just wanted to make sure that you are reading it
18 that way as well.

19 MR. BRILLIANT: We were reading it that way, Your
20 Honor. But we think it's inappropriate we have to file things
21 as an urgent motion and we have to justify why something is
22 urgent to potentially get what would ordinarily be but for
23 this case, you know, a schedule that would be consistent with
24 what Your Honor's or any other, you know, Court's rules might
25 be with respect to a hearing.

1 Like I said, you know, parties have the ability to
2 decide when to file things so you can manipulate dates a
3 little bit, but depending upon a hearing every six weeks, you
4 could literally, if you just follow the rules without having
5 to go to Your Honor and say that it's urgent, you would have
6 to wait, you know, almost 90 days, which is a very long
7 time.

8 THE COURT: And I understand that.

9 MR. BRILLIANT: We don't think it's appropriate. If
10 everybody has to live with it, both the debtors and other
11 side, then you'd say okay. That's just the rules of the road,
12 and everybody has to file motions --

13 THE COURT: I hear your asymmetric point, and also
14 your arithmetic. So what's your next point?

15 MR. BRILLIANT: That's all I have, Your Honor.

16 THE COURT: Thank you.

17 MR. BRILLIANT: Thank you, Your Honor.

18 THE COURT: Ms. Goldstein, you had your hand up next.
19 I'm sorry. I saw more hands on this side of the room.

20 MS. GOLDSTEIN: Your Honor, we had made a number of
21 comments on the Case Administration Order. Some of them have
22 in fact been resolved. And I believe what is left, to some
23 extent, is resolved, so I just want to clarify that.

24 So we did have an issue with the automatic stay
25 provision. We clearly understand when a Court needs to adjust

1 schedule, et cetera. I think what you have suggested will
2 work. We were concerned that changes to the statute, as
3 Mr. Brilliant pointed out, did shift the burden.

4 Certainly we agree that if a party schedules it for
5 the omnibus hearing, there should be an automatic waiver. I'm
6 uncomfortable I think with the idea for the non-debtors to
7 change anything we have to show urgency, but they don't. I
8 think our theme and our objection to the Case Management Order
9 was that there should be some procedural equality here or
10 procedural parity.

11 THE COURT: May I just interrupt you for a minute?
12 The nomenclature convention here is urgent motion. I didn't
13 make that one up. That's what it is.

14 MS. GOLDSTEIN: We've learned it recently, yes.

15 THE COURT: Yes. It was new to me less than two
16 weeks ago. I would expect that an urgent motion request for a
17 hearing out of the ordinary course will say something more
18 than I'd like that date better than another date, and would
19 include some, you know, substance of the reason why this is a
20 concern that we believe ought to be addressed before the next
21 omnibus.

22 I am not reading this proposed Order, and by my
23 insertion of the urgent motion nomenclature not requiring the
24 requesting party to be making a showing that, you know, all of
25 its heirs and assigns will die within the next 18 minutes if

1 | there is not a hearing immediately. So the local rules here
2 | distinguish an urgent motion from an informative motion, which
3 | doesn't ask me to do anything. An urgent motion is one that
4 | asks me to do something other than in the ordinary set up.

5 | So that's what I intend to mean by using the urgent
6 | motion and expecting some explanation for why that's being
7 | done. So maybe that will help you.

8 | MS. GOLDSTEIN: It does, Your Honor. I would
9 | understand that. It doesn't mean we have to prove irreparable
10 | harm or anything of that nature.

11 | THE COURT: Thank you. That's more succinct.

12 | MS. GOLDSTEIN: I would hope that the Oversight Board
13 | would not be filing motions on a regular basis outside of the
14 | omnibus hearing that don't have urgency to them. People
15 | travel far to get here. I think you're going to resolve our
16 | request, which the Oversight Board agrees with, on telephonic
17 | participation. At least that's what I heard.

18 | THE COURT: I am going to come up with a procedure,
19 | and I will let you all know what that is.

20 | MS. GOLDSTEIN: Yes.

21 | THE COURT: And I will say that I, too, expect that
22 | the Oversight Board isn't going to be asking me for out of
23 | course hearings every five minutes. And the Case Management
24 | Order begins with "subject to consultation with the Court."
25 | And so I expect to have and exercise some control over the

1 extent to which that happens.

2 MS. GOLDSTEIN: Now, I guess I have one other
3 question. I think this was the last of the procedural Orders
4 that you were considering. I know some of us have additional
5 comments in response to the status reports. And I'm happy to
6 go sit down and defer to other counsel to go first, but I just
7 want to have an understanding as to whether we would have an
8 opportunity to respond. I think you had also requested views
9 on mediation.

10 THE COURT: Yes. So if we can -- and actually let me
11 just check with the courtroom deputy.

12 So if we can move efficiently, and we may go just a
13 few minutes after 12:00, but I am mindful of the cafeteria
14 schedule here, and we will resume at 1:00. I would like to
15 finish the discussion on the Case Management Order before we
16 break for lunch. Then assuming that that is finished, when we
17 come back, I want to have just a brief discussion of a way to
18 cue up scheduling for the two matters that were recently
19 filed. That being the utilities motion, and also the Bank of
20 New York Mellon request for an Order to Show Cause.

21 Then after that, I will take brief remarks to the
22 extent we continue to have time until two o'clock from people
23 who requested in advance to speak. If we run out of time, I
24 invite informative motions.

25 MS. GOLDSTEIN: Thank you, Your Honor.

1 THE COURT: Thank you.

2 MR. MOLINA LOPEZ: May I?

3 THE COURT: Yes.

4 MR. MOLINA LOPEZ: Good morning, Your Honor. My name
5 is Daniel Molina. I represent Cesar Castillo.

6 THE COURT: Good morning.

7 MR. MOLINA LOPEZ: In this particular case, I am the
8 first attorney addressing you that does not represent a
9 bondholder, a GO, or COFINA, but rather a supplier of services
10 and materials to the Commonwealth of Puerto Rico. And our
11 motion was based on our concern that the noticing requirements
12 that require to be served -- the motions be served by
13 overnight delivery, hand delivery or other exceptions, and to
14 make the request by e-mail elective almost, it's really going
15 to be burdensome as to the Puerto Rican small creditors that
16 are going to appear before this Honorable Court.

17 So instead of making it just a thing that can be
18 opted by each of the creditors, to make it mandatory that if
19 you have an e-mail address, which is one of the proposals they
20 do but then later mix it up again, if you have an e-mail
21 address, that should be the way that it should be served. And
22 if the CM/ECF system is going to serve notices, that that
23 should serve notice to the parties unless the local rules
24 require that additional notice be served in the way of summons
25 or any other fashion.

1 So in order not to go over our motion already, our
2 position is that this Honorable Court should help us, and by
3 us I mean all the creditors that are not big firms, that are
4 not COFINA, that are not represented otherwise. That it's
5 going to be really burdensome to serve notices to possibly
6 hundreds -- and debtors' motion identifies that as possibly
7 hundreds of thousands of creditors. That if a portion of that
8 does file a notice of appearance, but then they want to
9 receive notices, we're going to be under the obligation of
10 serving paper copies to all those parties. Whereas if this
11 Court directs that if you have an e-mail, that is the way
12 you're going to get notified, and if the CM/ECF service is
13 going to serve you notice, that is going to be your notice
14 unless other specific local rule requires it, that would go a
15 very long way for helping us to reduce the cost for other
16 parties that are not bondholders or that are small creditors
17 that are going to start appearing to this case.

18 So that was our remarks outside of what is already in
19 our motion.

20 THE COURT: Thank you, Mr. Molina.

21 I would ask that Mr. Rutsky explain, because I see
22 some refinement of that in the proposed Amended Order. So
23 will you explain what's contemplated now?

24 MR. RUTSKY: Thank you, Your Honor. Scott Rutsky for
25 the Oversight Board.

1 So on the issue of service, I think we tried to
2 simplify the Order. I think in the original version, we had a
3 definition of standard parties that inadvertently included
4 every party that filed a Notice of Appearance. I think the
5 definition has been much simplified to include really AAFAF,
6 the Oversight Board, any statutory committees appointed in the
7 case, possibly the U.S. Trustee.

8 THE COURT: And me.

9 MR. RUTSKY: And the Court of course.

10 Those are the parties that would be required to be
11 provided with non-ECF service, unless they elected to do it.
12 So we think we've simplified it.

13 I'm not unsympathetic to the issue raised, and unless
14 I am mistaken, I believe that parties could call Prime Clerk
15 with their motion and ask it to be served on the list and do
16 it through that process rather than burdening them. I'm
17 asking that as a question.

18 THE COURT: Is the Prime Clerk representative still
19 here?

20 MR. SCHEPPER: Yes.

21 THE COURT: Can you -- actually, if you speak loudly
22 from there, I can repeat it, and you can tell me if I have it
23 right.

24 MR. SCHEPPER: Okay.

25 THE COURT: So would you, Mr. Rutsky, ask your

1 question again?

2 MR. RUTSKY: So my question is, in this case, if
3 outside parties would like to serve a motion, is it possible
4 that they could, you know, reach out to you to serve that
5 motion in accordance with the typical rules?

6 MR. SCHEPPER: As long as -- as long as the people
7 who give us our instructions, the Board is okay with that, we
8 can do that. And we'll bill those people directly as opposed
9 to billing the state. But yes, we can do that for our
10 people.

11 THE COURT: So the Prime Clerk representative
12 indicated that as long as the Oversight Board as the
13 instructing entity permits and directs Prime Clerk to serve
14 motions for other movants, Prime Clerk will do that and bill
15 that service expense to the movant. Is that what you said?

16 MR. SCHEPPER: That's exactly right. Correct.

17 THE COURT: Now, if a party has filed a Notice of
18 Appearance, they're on ECF, and so the movant files the motion
19 on ECF, are you -- does this procedure require the movant to
20 go outside of that ECF universe to serve the entire mailing
21 list as maintained by Prime Clerk?

22 MR. RUTSKY: Yes, to the extent that there was a
23 party in the master service list that was not someone that
24 filed a Notice of Appearance, that's possible. I also think
25 it's -- and this is not my strong suit, Your Honor. I also

1 think it's possible for people to file a Notice of Appearance,
2 but not every ECF down step comes through. There's a list of
3 parties that do get served I believe, and a list of parties
4 that don't.

5 I think we're talking about a very small universe, by
6 the way, of parties that under these procedures do not get ECF
7 notice or e-mail service. We certainly on behalf of the
8 Oversight Board, I can't speak for AAFAF, would be willing to
9 accept e-mail service for any papers given to us.

10 You know, the only concern I have with all of that is
11 we've all experienced circumstances where due to the size of
12 files, we just don't get them. And that's the concern, I
13 think why it's built in this way. So if it was filed with the
14 Court, we would get ECF notice of at least the filing. Others
15 may not.

16 THE COURT: So what I'm going to ask you to do in
17 response to Mr. Molina's concern is refine this procedure so
18 as to -- you will be able to rely to the maximum extent
19 possible on ECF filing. And I am not completely familiar with
20 all the 2002 requirements and everything else and the extent
21 to which they would apply here. But what I want to see is the
22 situation which -- you know, where people are truly interested
23 in knowing everything that's going on, they have an incentive
24 and notice that they should file a Notice of Appearance. That
25 will get them an ECF balance that to the extent the motion is

1 known to be one that would effect some person or constituency
2 that is not in the ECF universe, that there is an obligation
3 to ensure service by the most efficient way and timely on that
4 party. And that the -- literally the standing required group
5 of paper notice people is that very tight group: The Court,
6 the Oversight Board, the official committees.

7 And so will you work on refining that in the revision
8 of the Order, and also reach out to Mr. Molina and make sure
9 that he understands?

10 MR. RUTSKY: We will do that, Your Honor.

11 THE COURT: Thank you.

12 Anybody else?

13 MR. SOSLAND: Your Honor, Martin Sosland of Butler
14 Snow on behalf of Financial Guaranty Assurance Corporation,
15 FGAC. We filed an objection, which is docket 104, and
16 proposed three specific edits to the Case Management Order.
17 The third, to original paragraph 3(j), has been adopted by the
18 Board and is resolved. The first two edits are exactly the
19 point argued by Mr. Brilliant and Ms. Goldstein regarding the
20 overbreadth of the carve out of the debtors from the Omnibus
21 Procedures Order.

22 I won't reargue it now. I would ask you to consider
23 the two specific and brief edits that are included in our
24 objection at docket 104.

25 THE COURT: Would you just -- if you can remind me of

1 | what they are right now?

2 | MR. SOSLAND: They are in III, paragraph B. We
3 | proposed deleting "and any other pleadings filed by the
4 | debtors" from the list of admittedly major motions that the
5 | debtors proposed carving out of the omnibus hearing schedule.
6 | And in C, which was a forced default omnibus hearing dates for
7 | pleadings that are filed by any party, there was a provision
8 | that starts "if a document is filed by a party other than the
9 | debtors," and we suggested deleting "other than the debtors."

10 | THE COURT: Thank you.

11 | Was there anyone else who wanted to be heard?

12 | (No response.)

13 | THE COURT: Okay. So Mr. Rutsky, if you would
14 | respond?

15 | MR. RUTSKY: Thank you, Your Honor. And I'm hopeful
16 | from the earlier discussion, the points I just heard
17 | Mr. Sosland raise I believe were similar to the points raised
18 | by Mr. Brilliant or others. It's the same sort of issue.

19 | Let me start off by saying that none of this was done
20 | in the context of it's a gotcha, you know, we have a gotcha
21 | here, we're trying to do something untowardly. We are
22 | concerned about the things we don't know about, not just in
23 | terms of actions that may be brought against us, but we have
24 | to work with the Commonwealth. We are not the government. We
25 | are the Oversight Board. We are the representative of the

1 debtors. And there are issues and matters that may come up
2 that may simply require us to file a pleading or a motion that
3 don't fall within an omnibus hearing date, that we couldn't
4 reasonably anticipate.

5 So we were fine. I thought we had -- so we were
6 looking for flexibility, Your Honor, for the debtors, not as a
7 gotcha, but those types of issues. We don't plan on filing
8 things outside of omnibus dates. We would certainly, if it
9 effects a party, make a call and see if we could schedule it.
10 And we would have to obviously come to Your Honor in any event
11 to schedule such a hearing.

12 So I don't anticipate this is going to be a big
13 process here, but I think the debtor should be afforded some
14 additional flexibility, since again, we do not control the
15 government. As Mr. Bienenstock talked about earlier, some
16 issues arise, and it may not fit perfectly in the schedule,
17 but we'll endeavor to maintain the omnibus hearing dates to
18 the extent we can.

19 Obviously we will still have the ability to bring an
20 emergency motion or urgent motion, whatever the appropriate
21 phrase is, if that is the case. And certainly we don't expect
22 to change that outcome. So we would request on those issues,
23 Your Honor, and those representations, the added flexibility.

24 On the Lift Stay Motion, I think we would agree with
25 the procedures discussed today, and we will endeavor to draft

1 -- redraft those provisions to accommodate Your Honor's
2 suggestions, which I think are very helpful here.

3 The last issue, which again is not intended to be a
4 gotcha, relates to the adversary proceedings. All we were
5 suggesting, Your Honor, is there be a 45-day period for a
6 status conference. It doesn't prevent anybody from coming in
7 and saying, Judge, we have an adversary proceeding. We're
8 going to move by TRO. We need an urgent motion for relief.
9 None of that is prevented.

10 All we're suggesting, and I think the thought process
11 was, someone files an adversary proceeding. There's typically
12 a 30-day answer period. We would say move for a status
13 conference, you know, after that point. So we pick a date.
14 Obviously we didn't have visibility of the omnibus dates Your
15 Honor would suggest.

16 Again, this is not something done adversarially. Some
17 may have urgent relief requests. They will be on track if
18 that request is granted. If they're not, then we ought to
19 keep some semblance of order here.

20 Just to give Your Honor an order of magnitude, I
21 think prior to the commencement of the Commonwealth's case,
22 there were some 30 odd lawsuits filed in different courts,
23 many of which will be removed here. All this is trying to do,
24 and all the Case Management Order is trying to do is to bring
25 some order to this.

1 It's not trying to impede substantive rights if
2 parties come and say to Your Honor, we need a quicker status
3 conference. We need urgent relief. So that was the thought
4 process around the request on that issue, Your Honor.

5 I think those were the only issues besides the notice
6 issues. I think those are the three themes.

7 THE COURT: Thank you.

8 MR. RUTSKY: Thank you.

9 THE COURT: And so I do thank you all for your
10 submissions and your comments today. I will confirm the
11 direction that the Lift Stay provision be modified as we had
12 discussed.

13 As to the issue which I'm generally calling
14 asymmetry, the provisions to allow the debtors to initiate
15 scheduling in a way more flexible than other parties, I am
16 overruling the objection based on the Oversight Board's
17 undertaking here not to abuse the privilege. And also based
18 on the reality that by statute, the Oversight Board does act
19 for the debtor, has sort of unusual procedural prominence in
20 these proceedings, and does have to answer to a number of
21 other constituencies.

22 As to the Rule 16 conferences, I read that as a Rule
23 16 conference provision. And so the -- an urgent motion that
24 says, you know, we're just dying to start discovery, so for
25 this reason we need a Rule 16 conference earlier than that,

1 and the issue has been joined, and everything's good to go, is
2 something that I would consider. But I would ask that those
3 requests be sparing, and for good reason. And it doesn't
4 preclude applications for Orders to Show Cause and other
5 urgent relief.

6 So with the 362 alteration, and the others that we
7 have discussed, the Motion to Establish the Case Management
8 Plan is granted. And I will expect a settled, revised Order,
9 and that there be consultation in the preparation of that
10 revised Order in an effort to obviate the need for another
11 round of very heavy objections to the proposed Form of
12 Order.

13 MR. RUTSKY: Thank you, Your Honor.

14 Just one quick point.

15 THE COURT: Yes.

16 MR. RUTSKY: Not on this. I would be remiss if I
17 didn't comment on some comments made by Mr. Brilliant about
18 his clients' rights and their liens and what they are and what
19 they aren't. I don't think that was at all, our silence,
20 intended to be any kind of admission. Obviously everybody's
21 rights should be reserved, but I wanted to state that for the
22 record.

23 THE COURT: I assumed had I called on you, you would
24 have given me a different position.

25 All right. I apologize for having gone into

1 everybody's lunch hour a little bit. So we now have a lunch,
2 45 minutes, and we will resume at one o'clock. And I thank
3 you all.

4 (At 12:12 PM, recess taken.)

5 (At 1:04 PM, proceedings reconvened.)

6 THE COURT: So the next item on our agenda is the NY
7 Mellon adversary and request for an Order to Show Cause.

8 Now, before you dive into it, I'll say that I saw
9 these documents last night. I briefly reviewed them. My
10 intention today is certainly not to ask for argument on them,
11 but to do two things. One is that to the extent they are all
12 still in contention, even after some of what we've heard today
13 about the Commonwealth's intention with respect to the COFINA
14 funds, what I would like is for the parties concerned to
15 consult on a joint proposal for a briefing and hearing
16 schedule with a couple of dates, and provide that to me by
17 informative motion tomorrow or Friday. And in the meantime,
18 as you know, I still am kind of setting up my technological
19 arrangements to facilitate the next event that is not a full
20 blown court hearing here in Puerto Rico.

21 So that will be my request. But I will also ask that
22 you all consider whether in light of the comments that we've
23 heard today from the Oversight Board and the Commonwealth with
24 respect to immediate COFINA issues, there might be some ground
25 for stipulating to the interpleader deposit or some timetable

1 that is not quite as emergent if everyone is comfortable with
2 it, that sort of stand still.

3 And so would you please introduce yourself? I'm
4 sorry for taking up so much air.

5 MR. GWYNNE: Good afternoon, Your Honor. Kurt Gwynne
6 for Reed Smith, along with Lee Sepulvado Ramos with Sepulvado
7 & Maldonado, and Eric Schaffer and Luke Sizemore of Reed
8 Smith. We are counsel to Bank of New York Mellon as Trustee,
9 Bank of New York Mellon as Trustee under the resolution, and
10 with respect to the COFINA bonds in the approximate amount of
11 17.3 billion --

12 THE COURT: I'm sorry. I have to beg your indulgence
13 for one second. I thought I was completely signed into my
14 computer here, and it turns out I'm not. So if you will just
15 give me a minute to log in, I will then be able to give you my
16 full attention. And I apologize for that. Technology is a
17 wonderful thing until it stops you dead.

18 All right. Thank you.

19 MR. GWYNNE: There are two types of COFINA bonds.
20 There are capital appreciation bonds, or what we refer to as
21 CABs, for which interest is capitalized. It's not paid in
22 cash. It's added to the principal, and paid at maturity. The
23 maturity of the CABs are between 2047 and 2054. In addition,
24 there are cash interest bonds for which interest is paid in
25 cash when due.

1 With respect to both the CABs and the cash interest
2 bonds, there are both senior and secured -- I'm sorry, senior
3 and subordinated bonds. So all are secured, but we have
4 senior and subordinated bonds within both the CABs and the
5 cash interest bonds.

6 There are different lien priorities. There are also
7 different payment priorities at least at certain points
8 depending on what happens with the debtor.

9 Various beneficial holders of the bonds, Ambac, which
10 insures certain of the COFINA bonds, and COFINA have taken
11 conflicting positions regarding the existence and the effect
12 of a lower case default that is curable within 30 days under
13 the resolution, or the existence and effect of an immediate
14 incurable event of default.

15 Now, the senior CABs, the beneficial interest holders
16 for the senior CABs allege that the approval of the fiscal
17 plan and/or the enactment of the fiscal plan compliance law
18 gave rise to an immediate incurable event of default. As a
19 result of that alleged event of default, the senior CABs
20 holders allege that the COFINA bonds should be accelerated and
21 that Bank of New York Mellon should cease payments to either
22 all COFINA bondholders or just to certain COFINA bondholders,
23 namely the junior bondholders. The senior CAB holders are not
24 entitled, consistent with different groups, of what they've
25 demanded of the Trustee.

1 The beneficial holders of the junior CABs allege that
2 there is or was a lower case d default, but not an event of
3 default. And that it is a curable default. And the Bank of
4 New York Mellon cannot accelerate and cannot cease payments to
5 the junior bondholders.

6 The dispute regarding the effect of the occurrence of
7 an event of default and the effect that has on the right of
8 beneficial holders of junior COFINA bonds to receive payments
9 is a disputed issue. And I understand from Mr. Mayer that
10 the -- his group believed that the indentured trustee was
11 taking a position consistent with Mr. Kirpalani's group that
12 upon the occurrence of an event of default, the junior
13 bondholders have no right to receive payments, as opposed to
14 saying that's something that happens after an acceleration for
15 example. And we just want the record to be clear that the
16 indentured trustee didn't mean or intend to take a position on
17 that issue with respect to the bondholder groups.

18 COFINA takes a different position than both the
19 senior CABs and the junior CABs. COFINA says that no default
20 has occurred, period, not even a lower case d default. That
21 there's no right to accelerate the bonds. That the automatic
22 stay precludes the acceleration of the bonds. And that cash
23 in Bank of New York Mellon's possession is in fact COFINA's
24 property, and therefore Bank of New York Mellon cannot make
25 payments without COFINA's consent.

1 Now, we do understand, and this partially answers
2 Your Honor's question about scheduling, that COFINA has agreed
3 the June 16 payment could be made in the ordinary course of
4 business. The June 1st, 2017, sorry, payment could be made in
5 the ordinary course of business. However, the bondholders
6 still have disputes as to who is entitled to get that payment,
7 and that's why the scheduling between now and June 1st is
8 important for resolution at least with respect to the June
9 payment.

10 Now, Bank of New York Mellon filed the interpleader
11 and declaratory judgment action, and we propose in the Order
12 of Show Cause to have a hearing with respect to the right to
13 the payment, the June 1 payment. And that we needed that
14 hearing before June 1 so we knew how to make that payment.
15 It's possible that the funds could either be held by Bank of
16 New York Mellon until Your Honor rules, with the agreement of
17 all the bondholder groups, or an Order of Your Honor. It's
18 also possible that payments could be made to the bondholder
19 groups consistent with either Your Honor's ruling or an
20 agreement of the bondholders between now and June 1st. But
21 what Bank of New York Mellon is looking for is not to be in
22 the middle.

23 THE COURT: I understand.

24 MR. GWYNNE: Now, Bank of New York Mellon has been
25 sued prior to the filing of the bankruptcy case by both

1 Whitebox, which is a beneficial owner of approximately five
2 percent of COFINA bonds, primarily secured -- senior COFINA
3 bonds; and also by Ambac, an insurer of certain COFINA bonds.
4 Those actions are predicated upon the allegation that there
5 was an event of default, and that Bank of New York Mellon did
6 not declare an event of default and did not accelerate the
7 bonds.

8 Neither Whitebox nor Ambac provided many of the
9 things required by the indenture, such as direction by
10 registered owner in the case of Whitebox, or in both their
11 cases any indemnification, let alone satisfactory
12 indemnification. But those issues are not before Your Honor
13 today, and we're not asking in the Scheduling Order either,
14 we're not asking those to be decided today. Those are things
15 that will be decided in the ordinary case in the adversary
16 proceeding with respect to the declaratory relief.

17 We only ask Your Honor give us a hearing before June
18 1, so we can deal with that payment or maybe set up a
19 procedure to deal with the June 1 payment, the July 1 payment,
20 the August 1 payment until necessary to resolve the dispute.
21 I believe that counsel for the various groups that have
22 interests or alleged interests in the June 1 payment are in
23 agreement with scheduling a hearing before June 1. And that
24 would be Mr. Mayer, on behalf of the mutual funds;
25 Mr. Kirpalani on behalf of the Senior COFINA Coalition;

1 Ambac's counsel, Mr. Dunne; Whitebox's counsel, Mr. Fliman,
2 and COFINA's counsel, Ms. Uhland.

3 And if I misrepresent in any way, I ask anyone to let
4 the Court know. But assuming that everyone is in agreement,
5 Your Honor, perhaps we could just resolve the scheduling today
6 while we're all here.

7 THE COURT: The reason that I hesitate to do that is
8 that I need to see what's happening back in New York, both
9 technologically and court calendar wise. And so I understand
10 that at the latest, you would be wanting to have this hearing
11 the day after the Memorial Day weekend let's say?

12 MR. GWYNNE: (Nodding head up and down.)

13 THE COURT: And I will need briefing from you all
14 completed before the Memorial Day weekend. And so what I
15 would ask is two things, just again I think I followed
16 everything that you've said here, but if there is a scenario
17 in which you all would be prepared to stipulate to the
18 interpleader deposit and the funds being held by Bank of New
19 York Mellon, pending a lengthier and somewhat more targeted
20 briefing process that goes to the issues that you all consider
21 fundamental. Surprise. Surprise. That would be my first
22 choice.

23 Other than having to cue up this interim round of
24 briefing and technology for a hearing that is technically held
25 here but not necessarily attended by everybody here physically

1 at the -- right after the Memorial Day weekend, if it's not
2 possible for you all to do that, you let me know. But that's
3 why I'd like you to talk and file what would be a letter in
4 the Southern District of New York, but is an informative
5 motion copied to my e-mail address as soon as possible with
6 your proposal for a schedule. And I will work as promptly on
7 my end to work out whatever I need to work out.

8 MR. GWYNNE: Okay. Thank you, Your Honor. That's
9 all I have unless Your Honor has any questions.

10 THE COURT: I appreciate that. No, I don't. Thank
11 you.

12 Mr. Mayer, did you wish to say something?

13 MR. MAYER: Yes, Your Honor. Just briefly, we'll
14 work on a briefing schedule. The problem with let's just keep
15 everything the way it is and provide more time is these bonds
16 are held by thousands of people, and either there's a default
17 on June 1 or there isn't. And we just can't get to them.
18 There are 2.3 billion dollars of these bonds that are held on
19 island.

20 THE COURT: Yes.

21 MR. MAYER: So if you assume the hundred thousand
22 dollar amount per bondholder, that's probably really high, but
23 that's 23,000 people, so --

24 THE COURT: Yes. Thank you. It is always important
25 to see everything in context to reality.

1 Mr. Dunne.

2 MR. DUNNE: Your Honor, I will be brief. For the
3 record, Dennis Dunne of Milbank, Tweed, Hadley & McCloy on
4 behalf of Ambac.

5 I think that the Order to Show Cause that we received
6 kind of puts a torchlight on the conflicts that Bank of New
7 York has right now that are kind of debilitating. And we
8 have, as Mr. Gwynne mentioned, a pending suit against Bank of
9 New York. Milbank's not representing them on that. We have
10 co-counsel, Curtis Mallet, who is representing them, and
11 they're present in the court today.

12 I'm not going to get into those issues, because I
13 don't think that's before your court. But I'd like to just
14 say where we come out in the interim. We are fine with teeing
15 up this issue and briefing it. If Your Honor decides that it
16 needs to be expedited before June 1, fine. If you believe you
17 need to take more time because of the nature of the issues and
18 the ramifications you have in the case, we are fine putting
19 funding into escrow on June 1 as well. I think that's Your
20 Honor's choice.

21 What I think we need to do with respect to some of
22 the other matters that were touched upon in the Order to Show
23 Cause and the proposed Form of Order is preserve the status
24 quo. I can't say today, and I know we would likely be opposed
25 staying or otherwise dealing with the pending Bank of New York

1 litigation that Ambac and Whitebox have brought. That will
2 have to be dealt with some other way or putting in any kind of
3 exculpation language. Everybody's rights should be preserved.
4 But whatever's going on to date, whether people think there's
5 liability or defenses to that, that can't be dealt with on a
6 moment's notice in front of Your Honor today.

7 And I do echo some of the comments that it's time to
8 replace Bank of New York with a trustee for the seniors and
9 for the subs.

10 THE COURT: Thank you.

11 MR. KIRPALANI: Thank you, Your Honor. For the
12 record, Susheel Kirpalani, from Quinn Emanuel on behalf of the
13 COFINA Seniors Bondholders Coalition. And I'll be brief as
14 well.

15 We took your words to heart, and we'll work hard with
16 coming up with a schedule that makes sense not just for the
17 Court but for a lot of innocent parties that are out there.
18 And we are cognizant of that, and have been from the
19 beginning.

20 The one thing I wanted to mention is it seems to me
21 that there's 14 days between today and June 1st. This is a
22 very significant issue. I don't -- I'm not being critical of
23 the Bank of New York, but there's insufficient time I think
24 for parties to have the notice that I'm sure the Court would
25 like them to have, and that's why you're encouraging us to

1 work something out.

2 I think everyone in the courtroom has already agreed
3 that senior bond cash pay interest should happen, regardless
4 of any resolution of this issue. The only issue is whether
5 subordinate bondholders should also get cash pay interest on
6 June 1, or if that should be escrowed or everything should go
7 just to seniors, because there's been defaults.

8 Before the lunch break, Counsel I think for AAFAF was
9 saying or counsel for the Board was saying COFINA has an
10 independent board of directors. We talked a bit about that
11 before the lunch break, and yet we're hearing right now that
12 that independent board -- well, actually Mr. Gwynne didn't say
13 who is it from COFINA that says they could claim an interest
14 in the money that's at the Bank of New York which is creditor
15 cash. I have a good feeling it's not the COFINA board. I
16 have a very, very strong feeling that Mr. Rapisardi's client,
17 which is AAFAF, which again is the torchlight on the conflict,
18 there are very grabby hands on this cash.

19 And it's a lot of cash. It's over 400 million
20 dollars at the Bank of New York. But as of June 1st, Your
21 Honor, we're talking about I think it's six million dollars of
22 senior cash pay interest, and five and a half million dollars
23 of subordinate cash pay interest. I would like to propose
24 that everyone agrees there should be no interruption to senior
25 cash pay interest. They're also widely held on the island,

1 and on the mainland, and have equal rights wherever they live.

2 And the subordinate cash pay interest, that's really
3 the dispute. And if we could stipulate to put that into an
4 escrow until the Court has sufficient time to hear the
5 briefing, it seems the most practical solution. Since no one
6 can dispute that senior bond payments get made no matter what
7 other than this new concept that COFINA somehow gets to take
8 the money away from the creditors, even though COFINA itself
9 has nothing other than an empty securitization that's a
10 conduit for creditors to get to.

11 THE COURT: Well, I urge you to be that passionate
12 and articulate in the consultations among counsel, and if it
13 works and everyone agrees, that's terrific. Otherwise you'll
14 be making that argument again before me just after Memorial
15 Day.

16 MR. KIRPALANI: Fair enough. Thank you, Your Honor.

17 THE COURT: Thank you.

18 MS. UHLAND: Your Honor, Suzzanne Uhland of O'Melveny
19 on behalf of AAFAF.

20 THE COURT: Good afternoon.

21 MS. UHLAND: I'd like to just clarify some of the
22 points with respect to AAFAF's position. And AAFAF, as its
23 representative, under Puerto Rico statutes, it's a
24 representative of COFINA with respect to restructuring
25 matters.

1 As the counsel for the Bank of New York indicated,
2 COFINA has taken the position, and it's AAFAF on behalf of
3 COFINA has taken the position that certain amounts that are in
4 pledged bank accounts constitute property of COFINA. We're
5 trying to clarify that the debtor, COFINA -- that the property
6 is in fact subject to a security interest, and it remains
7 property of COFINA. And it's simply pledged to the
8 bondholders.

9 That is the point we made in communication, in
10 correspondence to the Bank of New York. And they included
11 that position in their filings with the Court. So it's very
12 clear. And we do not appreciate comments about being over
13 reaching or grabby on behalf of the Commonwealth. We just
14 want to be very clear when we're representing COFINA, we're
15 talking about COFINA's rights to the property in its bank
16 accounts and its property.

17 THE COURT: Thank you.

18 MR. STANCIL: May it please the Court, Your Honor.
19 My name's Mark Stancil from Robin Russell. I'm co-counsel
20 with Mr. Rosenberg on behalf the GO Ad Hoc Group. I actually
21 think I can, and I'm hoping to, narrow some of the concern
22 here.

23 I understand this motion to concern intraCOFINA
24 issues. Meaning disputes between the trustee, the subs, and
25 the seniors. The GOs, as Mr. Rosenberg explained, the GOs and

1 the Commonwealth have a dispute as to COFINA's basic validity.
2 And I think it's important for purposes of trying to address
3 this intraCOFINA issue that it be clear that nothing that
4 would be decided in this apparently expedited context would
5 touch on the basic validity of COFINA, because I think this
6 thing will just multiply and multiply if in the course of
7 briefing, that -- what their rights are if COFINA is valid, if
8 there are things that then we ask COFINA on the part of GO
9 holders, either come in and clarify that -- they're making
10 certain assumptions or statements about the overall validity
11 of COFINA that we would want to challenge.

12 So I think we would just like to have a chance to
13 work with counsel in proposing something to make sure that if
14 this is truly an intraCOFINA dispute, it stays in that lane.
15 And we would in due course -- I think we're going to have to
16 deal with a larger COFINA validity question, but if we're
17 trying to do this by June 1, it's going to be a nightmare.

18 THE COURT: That would be a word for it.

19 MR. STANCIL: Yes. Thank you.

20 THE COURT: Thank you. And I do urge you to discuss,
21 to try to make the process focus on the issues that have to be
22 addressed in a short time frame. Thank you.

23 MR. FLIMAN: Good afternoon, Your Honor. Daniel
24 Fliman with Kasowitz Benson Torres on behalf of Whitebox.

25 Your Honor, I just have two points. The first is I

1 agree with Mr. Dunne. I think there needs to be a bifurcation
2 on some of the things that are going to go forward. We agree
3 to the idea of the interpleader. We understand the urgency on
4 that.

5 Bank of New York, however, also asked to stay our
6 litigation. We are a plaintiff, brought an action against
7 Bank of New York in state court in New York. That action is
8 proceeding. The request to stay litigation, and I'm not going
9 to argue the merits right now, we think that there is no merit
10 to that request, but that is certainly not an urgent thing.
11 That needs to be briefed and thought out carefully and brought
12 to Your Honor in due course as opposed to some kind of
13 unnecessarily expedited fashion.

14 The other point I want to make is to Mr. Kirpalani's
15 point. There is not consensus about whether the senior coupon
16 bondholders should get paid with the money held at the Bank of
17 New York, and he knows that. Whitebox disagrees with that
18 perspective. We believe no payment should go out the door,
19 which is why we're supporting interpleader.

20 And the main reason for that, Your Honor, very
21 briefly, is what gave rise to our lawsuit against Bank of New
22 York, which is that it is inherently conflicted by
23 representing essentially four different types of bonds with
24 very, very -- very, very conflicting positions, different
25 treatment, different priorities. And until and unless that

1 conflict is addressed, the right outcome is for Bank of New
2 York to hold onto the money and only make a distribution once
3 the conflicts are resolved.

4 THE COURT: Thank you.

5 MR. FLIMAN: Thank you, Your Honor.

6 MR. GWYNNE: Kurt Gwynne, for the record, on behalf
7 of Bank of New York Mellon. If I could just respond briefly?

8 THE COURT: Very briefly, because it's 1:30.

9 MR. GWYNNE: Your Honor, with respect to the
10 litigation against Bank of New York Mellon, that is not before
11 you today, but that litigation is based upon a premise of an
12 event of default, which many parties in this courtroom say it
13 doesn't happen. It doesn't make sense to litigate that in
14 state court with a five percent beneficial interest holder or
15 Ambac as opposed to in this court with all participants
16 participating.

17 With respect to the general obligations bondholders'
18 interest, Your Honor, I don't think we're asking you to bless
19 the COFINA structure by allowing the June payment or having it
20 escrowed, whatever it is. But anyone who asserts any interest
21 in those funds when the money goes out, obviously the bank has
22 to be protected from that. And whether we have a stipulation
23 or Order from Your Honor, it would have to be -- I mean a
24 separate Order, we think we need Your Honor's signature on
25 something for the bank's protection. Even if it's a

1 stipulation, we would also have an Order associated with it.

2 We're happy to talk to the parties and agree upon a
3 schedule, but as Your Honor can see, there are many disparate
4 interests. Thank you.

5 THE COURT: Yes. Thank you.

6 And I think everyone has heard everyone else, and I'm
7 not presuming that anyone agrees with anyone else, but this is
8 a good basis for the next step in the process.

9 All right. So AAFAF filed an Urgent Motion for an
10 Interim Order and Final Hearing concerning the continuation of
11 utilities and adequate protection. And my intention is to
12 set -- to take it under advisement, quite frankly; require
13 opposition by two o'clock Friday, reply papers by two o'clock
14 Sunday.

15 I understand that May 23rd is a crucial date for you,
16 that being 20 days out from the Commonwealth filing. So I
17 just wanted to let you know before you spoke that that's how
18 far I've gotten.

19 Ms. Uhland, now take me further.

20 MS. UHLAND: We appreciate that, Your Honor. I do
21 believe we tried to address maybe some of the calendar issues.
22 And taking a hard read at 366(b) which is applicable here, not
23 (c), which requires that the debtor furnish the adequate
24 assurance within 20 days, I think that could be read, since in
25 our motion we stated we would continue to pay in the ordinary

1 course and agreed to an administrative expense, to the extent
2 we don't, I think that could be read to say the motion itself
3 complied with the 20-day period. And the Court could then
4 schedule the motion on regular notice, and the notice
5 procedure would then -- the Order would simply provide for
6 parties seeking to modify the adequate protection.

7 THE COURT: All right. And so how would that just
8 work mechanically? Would you revise your Proposed Order and,
9 you know, make sure that no one is on the immediate time frame
10 taking the position that what has been done so far is
11 insufficient for the adequate protection offer? Do we need to
12 have briefing on the other question of whether that is
13 sufficient for 20 days?

14 I'd just be grateful if you would play that out for a
15 me a bit more.

16 MS. UHLAND: Really what the motion does is it
17 addresses the second sentence of (b), which says on request of
18 a party, a party can bring a motion to seek additional
19 adequate assurance. And what our motion does is really sort
20 of a procedural addressing of the second sentence of (b).

21 THE COURT: Yes.

22 MS. UHLAND: So I would take the position that until
23 an Order is entered, the parties can bring their motions for
24 adequate assurance as they wish. And once the Order is
25 entered, then that Order would apply, would channel those in

1 accordance with those procedures. So I would take the
2 position no party would be prejudiced in the interim, and the
3 Court can enter the Order on regular notice.

4 THE COURT: But honestly, the trouble is I haven't
5 memorized precisely what your Order says, and so I -- my
6 recollection of your Proposed Order was that it was seeking a
7 determination that the offer that had been made constituted --

8 MS. UHLAND: Right.

9 THE COURT: -- adequate protection, and then setting
10 a set of very specific requirements for any motion challenging
11 the sufficiency of that adequate protection down the road.
12 And so in reading the Order that you proposed to me, it seemed
13 that the -- that there was potential for opposition, both of
14 the proposition that what has been proposed now is adequate
15 protection, and for opposition to entry of the set of
16 requirements.

17 And so I am not certain that I fully understand the
18 distinction, whether I read it right in the first place, and
19 if I did, the distinction between that and what you're
20 proposing now, and how the -- your read over lunch simplifies
21 the process or obviates the need for hearing potential
22 objections to what you had proposed.

23 MS. UHLAND: Our position would be that the parties
24 would still be able to challenge both, whether what we
25 furnished is adequate and whether the procedures are

1 appropriate, but that the Order would not need to be entered
2 within 20 days. This Court need not determine that it's
3 adequate within 20 days. We only need to --

4 THE COURT: Have that motion in place?

5 MS. UHLAND: Or make the offer, furnish.

6 THE COURT: All right.

7 MS. UHLAND: So we are trying to address the
8 calendaring issues. All of that said, if the Court wants to
9 keep it with the quick briefing schedule that you proposed
10 initially, that's fine, but we were trying to take some of the
11 pressure off by putting it on regular notice.

12 THE COURT: I am always happy to give up Sunday
13 briefing, or the reading of Sunday briefs.

14 Okay. So this brings me back to how we proceed.

15 MS. UHLAND: We would re-notice our motion.

16 THE COURT: Okay.

17 MS. UHLAND: We would re-notice our motion for
18 regular notice, and request findings consistent with ability
19 to challenge the adequacy of what we've furnished, and
20 challenge the procedure we propose.

21 THE COURT: All right. So your re-noticing the
22 motion then essentially withdraws the urgent motion?

23 MS. UHLAND: Yes.

24 THE COURT: So I don't have to sign any Order,
25 because you're going to re-notice the motion and take the

1 position that the current payments, instead of the offer that
2 -- of administrative priority satisfies the 20-day requirement
3 for adequate protection. And that any litigation of the other
4 procedures would occur on the ordinary motion schedule?

5 MS. UHLAND: Yes.

6 THE COURT: Thank you. I'm sorry. I didn't -- I
7 thought you were still asking me to sign an Order, and that's
8 why I was a little bit confused. So thank you.

9 MS. UHLAND: All right. You're welcome, Your Honor.

10 THE COURT: All right. And so we have 20 minutes.
11 And so there are parties that asked to be heard, one of which
12 being the Ad Hoc Retiree Committee. The U.S. Trustee's Office
13 indicated that it intends to put in oppositions and
14 perspective. I don't want to hear any premature argument of
15 that motion.

16 So I'll tell you the order I have the request to
17 speak listed on my agenda here is Ad Hoc Retiree Committee, Ad
18 Hoc Committee of General Obligation Bondholders, CMA
19 Architects and Engineers, Mutual Fund Group, Assured Guaranty,
20 Peaje Investments, National Public Finance Guaranty
21 Corporation, and COFINA Senior Bondholders Coalition.

22 Obviously, unless everyone just shouts for one minute
23 and does a round robin, that's not all going to happen by two
24 o'clock. So I'd ask that you self identify, limit yourselves
25 to three minutes, and try to -- self identify is people whose

1 points have otherwise not been made here that you think would
2 be useful for the whole group to hear live. As I said, I
3 invite informative motions with longer discourses, statements.

4 So I see one person in the aisle and one person
5 getting up here. So I'll take the gentleman in the aisle
6 first. And at two o'clock we're going to call time.

7 Thank you.

8 MR. GORDON: Thank you, Your Honor. For the record,
9 my name is Robert Gordon of Clark Hill representing the Ad Hoc
10 Committee for the Protection of Accrued Retirement Benefits of
11 Puerto Rico's Public Employees and Retirees, also known as the
12 Ad Hoc Retiree Committee, also known as the Movimiento Pro
13 Pensionados.

14 Recognizing the time is short, I will try to be
15 succinct and speak quickly. Thank you for the time, Your
16 Honor.

17 Our motion already discusses the Committee's broad
18 and fair representation of the retiree community, so I will
19 not dwell on that other than to reiterate that we comprise at
20 least 15 Puerto Rico based retiree organizations that
21 represent in the aggregate over 91 thousand retirees from all
22 sectors of the public sector, including police and teachers
23 and school luncheon employees of the central government and
24 municipalities.

25 I want to make clear that our filing of our motion

1 certainly was not intended to usurp any role accorded to the
2 U.S. Trustee's Office in appointing committees. And we
3 understand and respect the U.S. Trustee's need to conduct its
4 analysis as referenced by Ms. Lecaroz.

5 However, on the other hand, I also want to emphasize
6 that Section 1102(a)(2) of the Bankruptcy Code which is
7 incorporated into PROMESA explicitly contemplates that parties
8 in interest may file requests for the appointment of
9 additional committees and that Section 1102(b)(1) of the
10 Bankruptcy Code explicitly contemplates that there can be
11 situations in which the true economic parties at interest, the
12 creditors have already fairly formed the pre-petition ad hoc
13 committee. And that such committees, in such situations,
14 should be given proper consideration.

15 I submit that it goes to the fundamental right of
16 parties to representation of their choosing. And our motion
17 was simply filed in that spirit, and under the letter of
18 Sections 1102(b)(2) and 1102(b)(1) of the Bankruptcy Code.

19 In any event, there certainly are a balancing of
20 interests involved in the appointment of such committees, and
21 we have reached out to the U.S. Trustee's Office and offered
22 our assistance in providing any additional information that
23 the office needs in order to evaluate our motion and to work
24 together collaboratively to resolve any issues. And we hope
25 we can do so.

1 As of today, Your Honor, we have not had any dialogue
2 with the U.S. Trustee's Office, but we hope we will be invited
3 to have such in the future. The only other sentiment I'd like
4 to express if I may, Your Honor, because a simple reading of
5 our motion would not alert anyone to this, is just I would
6 like to highlight the conduct of the Ad Hoc Committee leading
7 up to today.

8 It's important to recognize the difficult position
9 that the members of the committee have been put in when they
10 have been reading for the last two or three months about the
11 Title VI negotiations and the development of a fiscal plan and
12 the anticipation of cuts to pension benefits and health care
13 benefits and other retirement benefits, and their constituents
14 are not at the table. They are the effected parties, and they
15 are not at the table.

16 And there is a temptation in that situation, as you
17 can imagine, to want to take to the press or take to the
18 courts or take to the streets and express frustration. And to
19 their credit, with the advice of counsel, they have shown
20 tremendous restraint and have not done so when others have.
21 And they have done it in an effort to demonstrate that they
22 embrace the concept that in order to play a meaningful role in
23 this process, in order to be a legitimate player in this
24 process, they must embrace the concept that negotiation,
25 sitting down and having discussions, meaningful conversations

1 with the other parties has to happen first. They have done
2 that, and I hope and I believe that they have earned that
3 right to then participate in this process.

4 And again, we look forward to speaking with the U.S.
5 Trustee's Office to hopefully make that happen.

6 THE COURT: Thank you, Mr. Gordon.

7 MR. GORDON: Thank you, Your Honor.

8 THE COURT: Yes, sir.

9 MR. MUDD: Good afternoon, Your Honor. John Mudd for
10 CMA Architects & Engineering LLC. The reason I asked to speak
11 was mediation. Your Order asked the Board to discuss
12 mediation. The only thing I have heard on mediation is
13 mediation to bondholders. Since my client is not a
14 bondholder, we don't have anything to say.

15 THE COURT: Well, my question about mediation wanted
16 to know the current status. And my further thinking about an
17 overall approach to mediation will be informed by everything
18 that I'm hearing today. And I'm sure that the Oversight
19 Committee's approach will be informed as well. So we will
20 move forward. And I thank you.

21 MR. MUDD: Thank you.

22 MS. GOLDSTEIN: Thank you, Your Honor. I appreciate
23 that there will be many other opportunities for National to
24 articulate its views before this Court, so I will be much
25 briefer than I originally intended.

1 THE COURT: Thank you. And just for the record,
2 that's Ms. Goldstein.

3 MS. GOLDSTEIN: Yes. I just want to make the point
4 that these Title III cases are not the beginning of the
5 negotiations or discussions between creditors and the
6 Commonwealth and its instrumentalities. National has been at
7 this for three years approximately. And, you know, we have
8 accomplished with other creditors an agreement, for example,
9 with respect to PREPA.

10 And I want to make a point about reaching an
11 agreement on the PREPA deal, which I think is salient to
12 moving forward with respect to the Commonwealth. An important
13 cornerstone of that organization was transparency with respect
14 to the financial information needed with creditors to agree to
15 and support that deal.

16 It's before the Oversight Board now for
17 certification. We hope and expect that that will happen. The
18 good faith negotiations and the transparency as to the
19 financial information that enabled a PREPA negotiation is
20 critical as we move forward here.

21 I appreciated the comments made on behalf of the
22 Oversight Board and AAFAF that they look forward to working
23 cooperatively with creditors. We hope that is the case.
24 We're prepared to engage in discussions or mediation as the
25 case may be. But we are concerned that we get the type of

1 financial diligence that will enable our client and other
2 creditors to make informed decisions with respect to any type
3 of consensual negotiation.

4 I mentioned that National is a long-term player with
5 respect to this island, shares an interest with the
6 Commonwealth in the long-term well-being of this island. But
7 that includes financial stability, and that has to be based in
8 our view on consensual debt restructuring with creditors that
9 will enable future access to capital markets. Indeed, that's
10 one of the objectives of PROMESA.

11 So in order to get there, we need a mutually
12 understandable financial database, one that the creditors
13 believe in, one where there is credibility. And I think that
14 has to go forward.

15 THE COURT: Now, has that been the subject of
16 specific discussions yet?

17 MS. GOLDSTEIN: To date, Your Honor, with respect to
18 the Commonwealth discussions, the answer is no. While, you
19 know, we have made many, many diligence requests, we have
20 gotten some responses from the financial advisor -- our
21 financial advisor has gotten some responses to questions from
22 the financial advisor to AAFAF. But we have asked for a
23 number of additional things relating to the Commonwealth,
24 relating to the data underlying the fiscal plan, relating to
25 some of the elements in the fiscal plan, relating to health

1 care. I didn't bring up my list because frankly, Your Honor,
2 I was trying not to --

3 THE COURT: Yes. I appreciate that.

4 MS. GOLDSTEIN: Not to get granular on that. But we
5 have met with obstacles. When we have requested certain
6 things from the Oversight Board, for example, that we thought
7 they agreed to give us, the answer was well, the Commonwealth
8 hasn't agreed to that.

9 Even very recently when we reiterated the request
10 that we believe the Commonwealth had agreed to, and with the
11 Oversight Board counsel being present, Commonwealth hasn't
12 agreed to it. We had hoped that the Oversight Board in terms
13 of its responsibilities to get to financial stability would
14 also be the enforcer of transparency, and we think that it's
15 needed by all creditors.

16 I'm prepared to look forward, and as you asked what
17 has happened to date, we've been very disappointed with what's
18 happened thus far. Offers have been made. We haven't been
19 included. I don't want to get through everything. However, I
20 think that as we move forward, as I said, whether it be
21 through mediation or otherwise, we need to have the kind of
22 diligence that you see in any debt restructuring.

23 In many senses, while this is very different and has
24 many different elements, we're talking about a debt
25 restructuring. There needs to be serious openness about

1 financial data. The only financial statements we've seen thus
2 far are stale. I mean frankly, as a condition of filing, we
3 should have at least seen drafts of the new financial
4 statements and information that would allow a creditor to make
5 an informed decision. We are very, very far from that.

6 We just request, and this is more to the Oversight
7 Board, that their job include the facilitation, even insisting
8 on creditor access to information. This needs to happen
9 notwithstanding legal issues that we have raised in a
10 Complaint with respect to the legality of certain aspects of
11 the fiscal plan.

12 No matter what happens in that litigation, while that
13 may change the shape of the table a little bit, it doesn't
14 change the need for accurate financial data that is available
15 to creditors.

16 Our client is restricted. We're under MDA. And I
17 think it's important for -- I know other groups may have
18 different issues with trading, but there still needs to be a
19 way through advisors and other creditors for us all to have
20 the same information and the same access.

21 And I want to comment a minute on committees, because
22 I do want to respond a little bit to the U.S. Trustee. Our
23 confusion under PROMESA was the provisions under 28 U.S.C., I
24 think it's in the 560s which authorize generally the U.S.
25 Trustee to supervise cases and basically empower them in

1 Chapters Seven, Nine, 11, 13, 15. But by the way, not --
2 Chapter Nine was not incorporated in PROMESA, but it does have
3 provisions related to committees.

4 So if there will be committees based on those
5 provisions, our view would be that there should not be a
6 committee with respect to COFINA for all the many reasons that
7 have already been stated about COFINA. We're all secured
8 creditors there.

9 And that there be a balanced membership of a
10 committee with respect to the Commonwealth. Our client is a
11 crossholder across many island issuers. We don't have a
12 position yet on whether we want to be a part of that
13 committee, but we do think that should be taken into
14 account.

15 THE COURT: And I believe that the representative of
16 the United States Trustee said this morning that they would be
17 posting solicitation information as to what direction they're
18 going in.

19 MS. GOLDSTEIN: And Your Honor, one thing I didn't
20 plan to comment on but I must comment on Ms. Uhland's
21 statements with respect to representation of COFINA. That was
22 a huge surprise to me that AAFAF is taking the position that
23 it is the representative of COFINA. AAFAF has clearly been
24 the representative of the Commonwealth that has not given us
25 any diligence. And so we found that stunning.

1 And also to say that they are going to assert a
2 property interest in the monies held by Bank of New York, I'm
3 not commenting on that, but the question is why? For whose
4 benefit?

5 I think the conflict is just starkly in front of us
6 today, and I just think it's one of the important things that
7 needs to be addressed as we go forward. As I said, that
8 wasn't a planned remark, but I just felt that I couldn't let
9 that go.

10 We did not take a position with respect to the Bank
11 of New York litigation. We do want to kept informed of any
12 schedule. Likewise, we are giving thought to the banking
13 issue with respect to COFINA, and we expect counsel will keep
14 us copied on any draft resolution.

15 Thank you.

16 THE COURT: Thank you, Ms. Goldstein.

17 MS. HALSTEAD: Good afternoon, Your Honor. May it
18 please the Court. My name is Ellen Halstead of Cadwalader,
19 Wickersham & Taft. We represent Assured Guaranty Corp and
20 Assured Guaranty Municipal Corp. Assured insures bonds issued
21 by Puerto Rico and various public corporations, and insures
22 approximately a total of 5.4 billion dollars of debt.

23 Like Ambac and National, Assured has been working
24 with Puerto Rico for a long time. In the case of Assured,
25 over 25 years. Assured views itself as a partner with Puerto

1 Rico. And Assured plans to be here for a long time, and is
2 committed to Puerto Rico's long-term financial health.

3 I just want to make two very quick points. First, as
4 to the fiscal plan, which has been addressed a few times in
5 this hearing, the current fiscal plan violates PROMESA and the
6 U.S. Constitution by disregarding lawful priorities and liens,
7 and also by allowing Puerto Rico to transfer revenues that are
8 the property of bondholders.

9 Puerto Rico has refused to engage in discussions with
10 Assured and other creditors regarding modifications to the
11 fiscal plan in order to address these important issues. As a
12 result, Assured and National were forced to file an adversary
13 proceeding in these Title III proceedings on May 3rd seeking
14 both declaratory and injunctive relief regarding the fiscal
15 plan.

16 Although that action is not before Your Honor today,
17 before there is any confirmation of any plan of adjustment,
18 the fiscal plan must be substantially modified in order to
19 comply with PROMESA, as well as the U.S. Constitution.

20 And I just have one other point. As Ms. Goldstein
21 stated, and I join in the statements she just made, Assured
22 and other creditors have been trying very hard to negotiate
23 with Puerto Rico. Although no resolution has been reached
24 yet, Assured is still willing to continue these negotiations,
25 to find a path forward to reach a consensual resolution.

1 Thank you.

2 THE COURT: Thank you, Ms. Halstead.

3 So this will be the last party speaker, and then I
4 want to call on Mr. Bienenstock -- oh, Mr. Rapisardi. All
5 right.

6 So Mr. Molina, I think it is, if you would be brief.

7 MR. MOLINA LOPEZ: Your Honor, thank you for the
8 opportunity. Just briefly, we wanted to express we had filed
9 a motion regarding the forming of the committee. We wanted to
10 express our thanks to the U.S. Trustee that it will form such
11 a committee.

12 And we wanted to point out something different than
13 other committees that may have been appointed in Chapter Nine.
14 We believe the committee appointed here needs to be
15 diversified enough, but also a very important issue is that
16 it's going to have fiduciary duties towards its constituency,
17 which will include, for example, one of the concerns this
18 Honorable Court stated at the beginning of the proceedings,
19 and that is to provide information in Spanish to its
20 constituency.

21 We are mostly here because motions and pleadings have
22 been filed in English, but we have to take into account that
23 78 percent of the Puerto Rican population either are not
24 proficient in English or do not speak English. Their first
25 and native language is Spanish. Therefore, one of the

1 concerns that should guide that committee to be appointed is
2 to provide as part of its fiduciary duties enough information
3 of the milestones that are set by this Honorable Court, as to
4 what is going on to this Court, and provide sufficient and
5 adequate information to that pool of creditors that may not be
6 represented by able counsel of the bondholders, but are
7 nevertheless entitled to know and have due notice.

8 So that was our concern that we wanted to state to
9 the Court. Thank you, Your Honor.

10 THE COURT: Thank you, sir.

11 Mr. Rapisardi.

12 MR. RAPISARDI: Thank you, Your Honor. I just wanted
13 to address a couple of points that were made by Ms. Goldstein.
14 First, with respect to the information that has been supplied
15 to the creditors, a very extensive effort went into preparing
16 a data room of thousands of pages of documents and information
17 that would be made available to the creditors prior to the
18 mediation sessions.

19 And I know Your Honor, because I was on site working
20 with a lot of the folks at AAFAF, watching them toil and
21 getting that information together. Now, is it perfect? Is it
22 a hundred percent complete? No. But to suggest that the
23 AAFAF team was not acting in good faith or was trying to
24 somehow hide the ball from the creditors by not providing
25 information to the best their ability is simply unfair.

1 I'm not saying, Your Honor, that we will, you know,
2 not consider additional requests for information if we've
3 overlooked things. We've had additional discussions with the
4 various committees to provide additional information.

5 Your Honor, I submit that compared to the information
6 that was supplied by the prior administration to creditors,
7 the efforts that we have taken, together with the Oversight
8 Board and the efforts that we made through the mediation
9 process to sit down, discuss -- it wasn't just the data room.
10 Your Honor, we scheduled meetings with each of the
11 constituencies through the auspices of Judge Gropper to make
12 ourselves available and answer his questions. I'll leave it
13 at that.

14 Now, with respect to shock and outrage, with respect
15 to my partner Suzanne Uhland's comments with respect to AAFAF
16 and it acting as a representative of COFINA, and not just
17 COFINA, but all of the entities that will be coming before
18 this Court in the form of Title III or for Title VI for that
19 matter, I prefaced my remarks this morning quoting Act 2-2017,
20 which was passed on January 18th of this year. And it was
21 called the AAFAF Enabling Act, passed by the Puerto Rican
22 legislature, and signed into law by the Governor, which
23 established a new charter for AAFAF, granting AAFAF the sole
24 authority to renegotiate, restructure or reach accord with
25 creditors with respect to any part of the public debt or any

1 other debt issued by any other governmental entity, including
2 but not limited to agencies, boards, commissions,
3 instrumentalities, public corporations, and political
4 subdivisions.

5 The fact of the matter is that COFINA is a subsidiary
6 of GDB. COFINA is an instrumentality of the government. And
7 it is within the government's power and the legislature's
8 power to revise or enable an agency under its authority to
9 take control with respect to, as I just went through,
10 renegotiation, restructuring with respect to any of those
11 entities. And that was done legally, pursuant to the
12 legislature acting in January of this year, and signed into
13 law by the government, by the Governor.

14 Thank you, Your Honor.

15 THE COURT: Thank you.

16 And so I thank you all. With respect to the
17 disclosure and mediation issues, I would like a status report
18 by mid June as to attention to and I hope further progress on
19 issues relating to the disclosure of information to creditors.
20 And if there are particular points of conflict about the
21 structure or the nature of the information to be informed as
22 to your -- not in their granular specifics, but what those
23 issues are and what is being done in terms of work on them,
24 and whether there are, there have been and are ongoing further
25 negotiation sessions, and as to what constituencies.

1 And as I said a few minutes ago, I will continue to
2 think further on the more global question of mediation as a
3 tool for advancing the resolution of these issues. By that
4 time, or even beforehand, I would welcome first, you know,
5 consultation among the principals, but informative motions
6 with ideas or suggestions as to what a structure might look
7 like. I will be forming some ideas of my own, but that will
8 also help to move that issue along.

9 And I would very much like to thank the staff of this
10 court, its judicial officers, and its administrative staff,
11 the administrative office, and the judicial officers and staff
12 of my home court. We have come a very long way in terms of
13 creating a structure for something that has not existed before
14 in the past two weeks.

15 I know that it is not perfect, but we are here today,
16 and I think we have made substantial progress today. And it
17 is only with the incredible hard work of everyone in these
18 courts, and this court in particular, that that has been
19 facilitated. And so I thank you on my own behalf and on
20 behalf of all of us who are able to be here.

21 And we are adjourned. Thank you.

22 (At 2:03 PM, proceedings concluded.)

23 * * *

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1 U.S. BANKRUPTCY COURT)
2 DISTRICT OF PUERTO RICO)

3

4 I certify that this transcript consisting of 149 pages is
5 a true and accurate transcription to the best of my ability of
6 the proceedings in this case before the Honorable United
7 States District Court Judge Laura Taylor Swain on May 17,
8 2017.

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13 S/ Amy Walker

14 Amy Walker, CSR 3799

15 Official Court Reporter

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